RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक २] गुरुवार ते बुधवार, मार्च ६-१२, २०१४/फाल्गुन १५-२१, शके १९३५ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 34 of 2002. IN Complaint (ULP) No. 333 of 2001.—Shramik Utkarsha Sabha, 3/141, MHB Khernagar, Bandra (E.), Mumbai 400 051.—*Applicant Versus*—(1) M/s. Devendra Shukla, Tea Stall Contractor, Platform No. 1, Andheri Railway Station, Mumbai 400 058; (2) Shri Devendra Shukla, Proprietor, M/s. Devendra Shukla, Anomanaya Bldg., R. No. 610, Rahaj Vihar, Near Chandwali Studio, Powai, Mumbai; (3) Shri A. V. Kulkarni, Presiding Officer, 3rd Labour Court, Mumbai.—*Opponents.*

In the matter of Revision Application U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri J. R. Pawer, Ld. Advocate for the Applicant.
Shri R. B. Vaidya, Ld. Advocate for the Opponents.

Oral Judgment
(20th June 2002)

The present Revision Application is preferred by the Original Complainant feeling aggrieved of the Judgment and order dated 3rd December 2001 whereby the 3rd Labour Court, Mumbai dismissed the Complaint (ULP) No. 333 of 2001 filed by the Complainant Shramik Utkarsha Sabha, for want of jurisdiction.

2. The brief facts giving rise to the case may be stated as follows :—

It is seen that the Complainant has filed the Complaint contending that its members mentioned in Exh. U-9/1 are the workers of the Respondent No. 1 *i.e.* M/s. Devendra Shukla, Tea Stall Contractor on the Platform No. 1 of Andheri Railway Station and the Respondent No. 2 is the Proprietor of Respondent No. 1. It is submitted that there are 21 workers employed by the Respondents and the Identity Cards are issued at the time of appointment. It is contended that the Respondent No. 1 is running its business since 1977. According to the Complainant on 21st January 2001 at about 1-30 a.m. the Respondent No. 2 called all the 21 workers and told them that their services are no more required from the next day and thus their services were terminated without following due process of law.

3. The Respondents filed their Written Statement which is at Exh. C-2. The Respondents have also filed an Affidavit at Exh. C-5 and it is the main contention that the tea stall run by the Respondents is situated on the land of Indian Railways and Railways is controlled by the Central Government. Thus it is stated that this Court has no jurisdiction to try and entertain the present Complaint.

4. The Labour Court framed the issue of jurisdiction and on hearing the submissions advanced by the Ld. Advocates for the parties held that it has no jurisdiction to entertain and decide the Complaint and it is against the said order, the present Revision is filed.

5. I have called for the record and proceedings and gone through the same. Heard Shri J. R. Pawar, Ld. Advocate for the Applicant and Shri R. B. Vaidya, Ld. Advocate for the Respondents. The following points arise for my determination with my findings thereon, as below :—

Points.—

(1) Whether Revision Application (ULP) No. 34 of 2002 is to be allowed for setting aside the order dated 3rd December 2001 ?

(2) What order and relief ?

Findings.—

Point No. 1.— No.

Point No. 2.— Please see order below.

Reasons

6. *Point No. 1.*— The Complainant Union has filed the Complaint U/s. 28 read with item 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 and thereby claimed various reliefs, as mentioned in the Complaint. Now the main contention of Mr. J. R. Pawar, Ld. Advocate for the Applicant is that the 3rd Labour Court, Mumbai committed error and illegality in coming to the conclusion that the Labour Court has no jurisdiction to entertain and try the present Complaint. According to Applicant's Advocate, the 21 employees who are members of the Complainant Union were employees of M/s. Devendra Shukla, Tea Stall Contractor and Mr. Devendra Shukla is its Proprietor and hence the Western Railways have no concern with the workers working with the Respondents. Mr. Pawar pointed out that the said workers were paid wages by the Respondents and they were working under the supervision of the Respondents and hence the Labour Court has wrongly come to the conclusion that because of the rulings reported in *2001 I CLR p/532* (Vividh Kamgar Sabha *V/s.* Kalyani Steels Ltd. and Anr.) and *1990 Lab. I.C. p/1018.* M/s. J. R. Jugele, Railway contractor *V/s.* Smt. Sitabai Atmaram and Ors.), it was no jurisdiction to decide the Compliant in question. The Applicant's Advocate therefore stressed that the order passed by the Labour Court be set aside and the Compliant be directed to be decided by the Labour Court.

7. On the contrary, Mr. R. B. Vaidya, Ld. Advocate for the Respondents supported the judgment of the Labour Court and canvassed that M/s. Devendra Shukla, a Tea Stall is run by Shri Devendra Shukla, the Proprietor who is a Contractor for running the tea stall. In support of his submission, he placed reliance on the Agreement for Stall / Table and pointed out certain conditions in respect of licence for running the tea stall in favour of M/s. Devendra Shukla. Mr. Vaidya further pointed out that the Respondents are given the licence for a particular period and for running the tea stall certain workers are engaged and if the licence is not renewed or revoked, in that case, it will be difficult for the Respondents to run the tea-stall because the same is given on contract basis. In view of this position and placing reliance on the cases cited before the Labour Court, Mr. Vaidya canvassed that the Labour Court has legally and properly held that it has no jurisdiction to entertain the Complaint.

8. On scrutinising the record and proceedings, it is rather difficult to accept the submission of Mr. J. R. Pawar, Ld. Advocate for the Applicant because the Respondent No. 1 - M/s. Devendra Shukla, Tea Stall Contractor is situated Platform No. 1 of Andheri Railway Station, Mumbai 400 058 and Respondent No. 2 is its Proprietor. The Agreement of Licence with the Railway Authorities is produced on record and it indicates that various conditions are imposed upon the Licensee including the supervision of the railway administration and there is also a mention that the Railway Administration shall have the right to terminate the licence if in their opinion (which shall be final and binding on the parties) the Licensee(s) is/are not conforming to the condition, mentioned in the Agreement, by giving due notice in respect thereof. In the Agreement there is also a clause that the Licensee shall not employ more than five Salesmen during working hours of the Stall / Table and the License fees including other charges is Rs. 37,003 p.a. Thus is clearly shows that the Respondents are the Contractor of the Railway Authorities for running the tea-stall and for that purpose the employees are engaged by the Respondents. In view of this position and the cases referred to by the Labour Court *viz.* reported in *2001 I CLR p/532* (Vividh Kamgar Sabha *V/s.* Kalyani Steels Ltd.) and that reported in *1990 Lab. I.C. p/1018* (M/s. J. R. Jugele, Railway Contractor *V/s.* Smt. Sitabai Atmaram and Ors.) the Labour Court rightly came to the conclusion that when the relationship of employer-employee is disputed contending that the member-workmen were working with the Railway Contractor, the Labour Court has no jurisdiction. It is also to be noted that as per the Licence Agreement, the activities of the Respondents are controlled by the Western Railways and hence the conclusion drawn by the Labour Court that it has no jurisdiction to try and entertain the Complaint in question appears to be consistent to the record and legal position. Hence, no interference of the Industrial Court U/s. 44 of the M.R.T.U. and P.U.L.P. Act is called for to disturb the reasoning and finding of the Labour Court. Therefore, I answer the Point No. 1 in the *Negative.*

9. *Point No. 2.*— In view of the foregoing reasons and finding on Point No. 1, the Revision seems to be devoid of merits and hence I pass the following order :—

Order

Revision Application (ULP) No. 34 of 2002 is dismissed.

No order as to costs.

F & P be sent back.

U. R. PATIL,
President,
Industrial Court, Maharashtra at Mumbai.

Mumbai,
Dated 20th June 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated 24th June 2002.

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IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 66 of 2002. IN Complaint (ULP) No. 473 of 1997.—(1) M/s. Consumer Communications, 52, Shafi Estate, Opp. Munjal Nagar, Amar Mahal, Chembur, Mumbai 400 089, (2) Mr. P. Venkatesh, Chief Executive Officer, M/s. Consumer Communications, Mumbai 400 089.—*Applicants. Versus*—Mr. Santosh Nagu Rangankar, 425, Baitha Bangla, Bhagvandas Wadi, V. Savarkar Marg, Prabhadevi, Mumbai 400 025.—*Opponent.*

In the matter of Revision Application U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri P. Gopalkrishnan, Ld. Advocate for the Applicants.
Shri A. G. Nagwekar, Ld. Advocate for the Opponent.

Oral Judgment

(Delivered on this 12th June 2002)

The Revision in question is preferred by the Original Respondents praying therein that the *exparte* order dated 9th March 2000 passed by the 2nd Labour Court, Incharge of 10th Labour Court, Mumbai be set aside. By the said order, the Respondents who are the Applicants herein are directed to reinstate the Complainant with benefit of backwages attached to the post and to go on paying the salary from the date of the application.

2. Brief facts giving rise to the case may be stated as follows :—

Record, reveals that the Complainant was in the employement of the Respondents as an Office-Boy and served there for about 9 years. He was getting salary of Rs. 1300 p.m. though he was eligible to get Rs. 1,800 p.m. It is submitted that the Respondent Management victimised him and other co-workers by not offering minimum wages as per the settlement by the Government of Maharashtra.

3. It is one of the main contention that the Respondents have terminated the services of the Complainant by violating the provisions of section 25-F of the I.D. Act and retrenched him. Therefore the action of the Respondent was nothing, but an unfair labour practice adopted. Thus on these and other grounds, the Complainant requested to declare that the Respondents have committed unfair labour practices and he be reinstated with full backwages, as prayed in the Main Complaint.

4. Despite the service of the notice, as per Exh. O-3, the Respondents though appeared did not file the Written Statement and hence the Labour Court proceeded in the matter *exparte* and passed the impugned order, referred to above.

5. Now by filing the Revision Application U/s. 44 of the M.R.T.U and P.U.L.P. Act, the Applicants *i.e.* the Original Respondents challenged the said order and requested to set aside the same particularly stating that the order passed by the Labour Court is without Jurisdiction as the 2nd Labour Court was incharge of 10th Labour Court. It is one of the contention that section 45 of the M.R.T.U. and P.U.L.P. Act, empowers the Industrial Court to withdraw any proceedings under the Act pending before a Labour Court and transfer the same to another Labour Court, the condition precedent being that the said transfer shall be by an order in writing and for reasons to be stated therein. Thus it is asserted in the Revision Memo that the disposal of the Complaint *vide* the impugned order by the 2nd Labour Court is in exercise of the jurisdiction which it inherently lacked because Originally the Complaint was pending in the 10th Labour Court. Thus on these and other grounds the Applicant requested to set aside the impugned order.

6. I have called for the record and proceedings and heard Mr. P. Gopalkrishnan, Ld. Advocate for the Applicants and Mr. A. G. Nagwekar, Ld. Advocate for the opponent. The following points arise for my determination with my findings thereon as below:—

Points.—

(1) Whether the Revision Appln. (ULP) No. 66 of 2002 is to be allowed by setting aside the impugned order dated 9th March, 2000 passed by the 2nd Labour Court, Mumbai, who was Incharge of 10th Labour Court, Mumbai ?

(2) What order and relief ?

Findings.—

Point No. 1.—No.

Point No. 2.—Please see order below.

Reasons

7. *Point No. 1.*— Record reveals that the original Complainant Shri Rangankar was in the employment of the Respondents *i.e.* Applicants herein and his services have been terminated. In the Original Complaint, it is alleged that the employer has adopted unfair labour practice under item 1(a), (b), (f) of Schedule IV of the M.R.T.U and P.U.L.P Act, 1971, as mentioned in detail in the Complaint, by way of retrenchment to the Complainant. Thus feeling aggrieved of the same, the Complainant rushed to the Labour Court and thereby claimed the reliefs mentioned therein.

8. Now the main contention and grievenace of Applicant's Advocate Shri Gopalkrishnan is that the impugned *exparte* order dated 9th March 2000 passed by the 2nd Labour Court, Incharge of 10th Labour Court, Mumbai is illegal and improper as the said matter was originally pertaining to 10th Labour Court. As per the submission of Applicant's Advocate unless there was an order of the Hon'ble President for transfer of the proceedings from the 10th Labour Court to 2nd Labour Court and notice of such transfer being served on the concerned parties, the 2nd Labour Court should not have passed the *exparte* order in the Complaint, referred to above. In support of his submission, Shri Gopalkrishnan placed a reliance on a ruling reported in *1969 II LLJ 296* (Engineering Mazdoor Sabha V/s. Aney (D.M.) and Ors.). On going through the said case, it indicates that there was a problem for consideration U/s. 33B(1) of the I.D. Act, 1947 and it is observed that an order to be made in writing should contain the reasons for transferring the proceedings from one Tribunal to another and what is contemplated is that the said order must be communicated to the parties to the said proceedings. Parties are entitled to know before whom and when the proceedings are going to be heard and before whom they have to appear and argue the case. Reference in the said connexion may be made to Rule 14 and 19 of the Industrial Disputes (Bombay) Rules, 1957 which provide for place and time of bearing and form of notice and summons. Mr. Gopalkrishnan also invited my attention to a ruling reported in *1959 II LLJ p/663* (Shree Shew Sakti Oil Mills Ltd. *V/s.* Second Industrial Tribunal) and Ors.). on going through this case, It indicates that there was also a problem for consideration of transfer of the Reference. The ratio indicates that the statutory provision contained in S. 33B uses the words "for reasons to be stated there". The reasons have to be stated so that they may be known to the parties concerned. To say that for the reason of expediency a pending Reference is withdrawn from one Tribunal and transferred to another may be a good reason provided it is stated what the reason is. What is the ground of expediency must have to be disclosed or otherwise it will not satisfy the requirements of S. 33B. Mr. Gopalkrishnan also placed his reliance on a case reported in *1961 II LLJ 122* Associated Electrical Industrties (India) (Pvt. Ltd., Calcutta V/s. Its workmen). In the said ruling, a similar observation is made, as detailed above in the earlier two case-laws. Mr. Gopalkrishnan also cited a case reported in *AIR 1977 Patna 131* (Kishore Kumar Agarwal V/s. Basudeo Prasad Gutigutia and Anr.). On going through this case, it indicates that there was a question for consideration U/s. 24 and Order 9, Rule 15 of Civil Procedure Code. There was a transfer of

case from one Court to another-Transferor Court must give notice of transfer to parties-*Exparte* decree passed against party without notice is invalid. Thus relying on the aforesaid cases, in substance Applicant's Advocate canvassed that in the case in hand, though the Complaint was assigned to 10th Labour Court and the same being vacant, the 2nd Labour Court who was incharge of the 10th Labour Court ought not to have passed the *exparte* order because there was no notice to the party regarding the transfer of the matter. Thus on these grounds, the Applicant's Advocate stressed that the impugned order passed by the Labour Court is illegal and deserves to be set aside.

9. It is rather difficult for this Court to share the submission of Applicant's Advocate for a simple reason that though initially Complaint (ULP) No. 473 of 1997 was assigned and pending before the 10th Labour Court, as the same was lying vacant, charge was given to 1st Labour Court, Mumbai presided by Shri V. P. Patil *vide* Office Order No. 8903 dated 23rd November 1998. Later on, charge of the 10th Labour Court was withdrawn from the 1st Labour Court and was given to the 2nd Labour Court, presided by Shri A. A. Lad as per the office order dated 22nd September 1999. Meaning thereby, whatever matters were pending in the 10th Labour Court, were to be looked into by the 2nd Labour Court, who was Incharge of the said Court and hence no question of transfer of the matter arises in the case in hand. Therefore, the case laws relied by the Applicant's Advocate, referred to above are not applicable to the case in hand for the simple reason that in the cases cited by the Applicant's Advocate, cases were transferred from one Industrial Court to another without giving notices to the parties. Here in the present case, there was no question of transferring the matters from one Court to another as the Incharge Court is also seized of the matters of the vacant Court as per the Office Order, referred to above.

10. On carefully perusing the proceedings in the matter, it indicates that the Original Respondent was served in the Complaint and one Advocate Mr. Kankonkar has filed the Vakalatnama for the Respondent. The Roznama reflects that from time to time on several occasions, the matter was adjourned for filing Written Statement, but on most of the dates neither the Respondent nor his Advocate remained present and throughout failed to file the Written Statement despite several chances. Apart from the above position, the Roznama further shows that the Complaint was listed for *exparte* hearing right from 21st December 1999 onwards and it is mentioned that none appeared for the Respondent and matter was fixed for *exparte* hearing on about 6-7 dates. Roznama dated 9th March 2000 clearly shows that on that day Mr. A. G. Nagwekar, Advocate for the Complainant was present and Shri N. N. Kankonkar, Advocate for the Respondent was also present and in their presence *exparte* judgment has been passed by the Labour Court on 9th March 2000. Thus in presence of the Respondent's Advodcate, the impugned *exparte* order has been passed by the 2nd Labour Court, who was incharge of the 10th Labour Court. It is necessary to place on record that the Ld. Advocate Mr. Kankonkar who was representing the Respondent should have preferred an application before the Labour Court for not passing the *exparte* order, but there is nothing on record that the passing of the *exparte* order was objected by the Respondent or its Advocate. In view of this position the submission advanced by the Applicant's Advocate regarding the powers and jurisdiction and transfer of the matter has no substance, as detailed earlier. It is because the Incharge Judge is having control over the matters of the Vacant Court and he can very well take up the matter for hearing and disposal. I don't find that in view of the aforesaid position, the Labour Court has committed any error of illegality while passing the *exparte* order.

11. It is further important to note that the Applicant U/s. 44 of the M.R.T.U. and P.U.L.P. Act and I don't find that herein has filed the Revision Application in the light of the circumstances, the same is maintainable. It is to be noted that the powers conferred by section 44 upon the Industrial Court empower it, in so far as evidence is concerned, to set aside the order under revision when the evidence on record, reasonably read, is incapable of supporting the order. In the case in hand, the Complaint was adjourned time and again for filing the Written Statement and despite several chances, the Respondent failed to file the Written Statement and even to attend the matter. The Ld. Labour Court again adjourned the matter for

exparte hearing and several opportunities were given to the Respondent for filing the Written Statement. Similarly, on 9th March 2000, in presence of the Advocate for the Respondent, the impugned *exparte* order came to be passed. Thus in view of this position, the remedy was available to the Applicant herein to take resort to section 31 of the M.R.T.U. and P.U.L.P. Act, which pertains to consequences of non-appearance of the parties and particularly Clause 2 is in respect of *exparte* order passed by the Labour Court and it provides that the aggrieved party may within 30 days of the receipt of the copy thereof, make an application to the Court to set aside such *exparte* order. If the Court is satisfied, that there was sufficient cause for non-appearance of the aggrieved party, it may set aside the order so made, and shall appoint a date for proceeding with the matter. It clearly appears that the Applicant herein has lost sight of the aforesaid provision and chosen a wrong forum to file the Revision Application in question U/s. 44 of the M.R.T.U. and P.U.L.P. Act. I don't find that any error or illegaility is committed by the Labour Court to call for the interference of the Industrial Court for setting aside the order in question.

12. On the contrary, Mr. Nagwekar, Ld. Advocate for the Respondent supported the *exparte* order passed by the Labour Court and canvassed that despite the said order, the Applicants herein have not complied the order passed by the 2nd Labour Court and the Original Complainant is out of employment and without any wages. Mr. Nagwekar canvassed for dismissal of the Revision Application in question.

13. In view of the foregoing reasons, I don't find any merit and substance in the Revision and hence I answer the Point No. 1 in the *Negative.*

14. *Point No. 2 :*— In view of the foregoing reasons, the Revision Application being devoid of merits, I pass the following Order :—

Order

Revision Application (ULP) No. 66 of 2002 is dismissed.

No order as to costs.

U. R. PATIL,
President,
Industrial Court, Mah. Mumbai.

Mumbai,
dated 12th June 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated 14th June 2002.

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IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI.

BEFORE SHRI P. B. SAWANT, MEMBER

REVISION APPLICATION (ULP) No. 18 of 2002.—M/s Sachdev Automobiles, H.P.'S Petrol Pump and Service Station, S. V. Road and Chincholi, Naka Junction, Malad (West), Mumbai-400 064.—*Applicant*.—*Versus*—Maharashtra Engineering Plastic and General Kamgar Union, Koknipada Kurar Village, Malad (East), Mumbai 400 097.—*Opponent.*

Coram.— Shri P. B. Sawant, Member.

Appearances— Shri R. R. Yadav, Advocate for the Applicant.
Shri C. L. Dudhia, Advocate for the Opponent.

Judgment

1. This Revision Application has arisen out of the order passed by the 7th Labour Court, Mumbai in Complaint (ULP) No. 384 of 1998 on 31st December 2001 and thereby was pleased to allow the complaint directing the Respondent to reinstate the 10 workmen with continuity of service and back wages. Being aggrieved and dissatisfied by the said order, the Respondent M/s. Sachdev Automobiles and its Partner Shri Girish Sachdev have filed the present Revision seeking indulgence of this Court in the said order. It is prayed that the order passed by the Trial Court is perverse, againt the provisions of law and therefore, deserves to be interfered with. It is prayed that the Court shall allow the Revision and consequently dismiss the complaint.

2. The facts which can be stated in nutshall for raising the ground for the Revision are as below.

3. Maharashtra Engineering Plastic and General Kamgar Union has filed a complaint against the Respondent having petrol pump and service station at Malad alleging against the establishment and its Partner that they have followed unfair labour practice under items 1(*a*) (*b*) (*d*) and (*f*) of Schedule IV of the Act. The Respondent is engaged in the supply of petrol, diesal etc. and it is covered under the Factories Act. There are 26 workmen working with the Respondent permanently but they are not supplied with the benefits of P.F. and S.S.I. cards. It is alleged that the management while paying the earned wages of the workmen obtained their signatures against their names putting on the revenue stamp without showing the exact figure paid to the workmen. It is further alleged that the employees by name Shri Tiwari and 9 others have approached the Respondent No. 2 for redressal of their grievances but their services are terminated by him with effect from 13th June, 1998 without following due process of law.

4. It is alleged that the Respondents have engaged goonda elements who are made to sit in the office of the Respondent and also recruited 4 to 5 workmen but have illegally terminated the employees whose names are shown in the Annexure. The employees who have enrolled themselves with the membership of the union have informed about the formation of the union to the Respondents. The Complainant also approached the Deputy Commissioner of Labour for intervention. It is alleged that the Respondents have committed unfair labour practice as the termination is without following the provisions of section 25F and section 25G of the Industrial Disputes Act. Hence, the complaint.

5. The Respondents have resisted the complaint by filing the written statement *vide* Exh. C-3 and denied all the adverse allegations contending *interalie* that the application is false and frivolous and the same is liable to be dismissed. The Respondents have challenged the very status of the Complainant alleging that none of the workers are having any membership

of the union. It is denied that the Respondent has engaged any unfair labour practice. It is contended that the Respondent has not terminated the services of alleged 10 workmen. On the contrary, it is pointed out that those workers have voluntarily resigned and settled their accounts. The allegations of not providing appropriate service conditions to the workmen of the Petrol Pump are denied. It is pointed out that because of internal dispute in the family, they were instigated to leave the job and after submitting a resignations, those workmen have no grievances of whatsoever nature against the Respondents. The allegations about engaging goonda elements in the petrol pump is being denied. It is contended that since 10 workmen have resigned from the services, the Respondent was required to engage 4 to 5 workmen. On these and other grounds, it is prayed that whatever allegations are made in the complaint may not be considered and consequently, the complaint be dismissed.

6. The Learned Trial Judge was pleased to frame relevant issues and then proceeded ahead in deciding the complaint on the basis of oral and documentary evidence. After perusal of the oral evidence on record, the Learned Trial Judge was pleased to come to the conclusion that the Respondents did follow unfair labour practice and thereby a declaration to that effect was given and consequently, a reinstatement was awarded.

7. Being aggrieved and dissatisfied with the said order, the present Revision has been filed. It is the contention of the Revision Petitioner that the order passed by the Trial Court is not legal, valid and proper. The Trial Court has not considered the facts on record properly. The Trial Court has also not considered the legal proposition adequately. The evidence on record regarding P.F. and E.S.I. cards has been overlooked by the Trial Court. After settleing the accounts of the workers, the Trial Court has also not given proper weightage to that aspect and thereby misdirected itself in drawing the conclusion. Therefore, it is pointed out that the Trial Court has erred in holding that the Respondents have followed unfair labour practice. The entire approach of the Trial Court according to the Rivision Patitioner, was perverse and was avoiding to consider the oral and documentary evidence on record. Thereby the Trial Court has erred in drawing the proper conclusion so far as crutial facts are concorned. By giving such perverse findings, the Revision Petitioner asserts that injustice has been caused which deserves to be interfered with the hands of this Court and therefore, it is prayed that the judgment and order passed by the Trial Court be set aside and quashed.

8. As against this, the Complainant who is Respondent in this Revision has supported the order passed by the Trial Court and prayed for the dismissal of the Revision Petition.

9. On these averments, following points arise for my determination :—

(*1*) Does the Revision Petitioner established that the Trial Court has erred in holding that the original Respondents have followed unfair labour practice ?	Negative.
(*2*) Dose the Revision Petitioner has proved that the Trial Court has erred in awarding reinstatement with all consequential reliefs ?	Negative.
(*3*) Whether the order passed by the Trial Court is legale and proper ?	Affirmative.
(*4*) Whether any interference in the order passed by the Trial Court is required ?	Negative.
(*5*) If yes, to what extend ?	Does not arise.
(*6*) What order ?	As per the order.

Reasons

10. *Point No. 1.*— On a bare look to the pleadings in the complaint, it postulates that the Complainant intends to make out a case of termination simplicitor without giving any reference to the aspect of resignation as being raised by the Respondent. The pleadings, therefore, emphasis that the Respondents have not paid any compensation, rather not followed the rule of " last come first go " and thereby committed breach under sections 25F and 25G. In the context, the evidence as led by and on behalf of the Complainant is in consonance with those pleadings and naturally, the evidence is silent so far as giving any resignation is concerned. The theory of resignation has been brought ahead by the Respondent by putting up the resignation letters before the Court. In the crutial circumstances, basically, one has to bear in mind that the termination whatsoever manner has occured. It has to follow by paying the legal dues to the employees referring to the tenor of their services. In pursuance of this principle, it is natural expectation that the Trial Court shall accept the evidence in the form of which will establish the breach of Section 25F and Section 25G besides establish a case of resignation. On the other hand, the Trial Court will naturally lien towards the oral evidence to ascertain the fact as to whether there were circumstances which made all the employees enblock to submit their resignation. Obviously, the resignation letters as being brought ahead are sterio type and monotomous. All the letters are dated 12th June 1998 and are being signed by the concerned employees. The amount paid to each of the employee is according to the Respondent, entered into account book and therefore, the genuineness of the resignation letter according to the Respondents cannot be challenged.

11. In pursuance of the above factual aspect, the variasity of the resignation and the observation of the Trial Court will have to be looked into minutely. It has to be borne in mind that this Court is sitting under the purview of Section 44 of the M.R.T.U. and P.U.L.P. Act and rights under Section 44 given by the statute are very restricted which includes that the Court cannot reappraise the entire evidence which has been appreciated by the Trial Court.

12. I have fortified my conclusion relying on the land mark judgment in a case of *Vithal Gatlu Marathe* V/s. *Maharashtra State Road Transport Corporation, 1995-I-CLR-854* wherein it is laid down that power under supervisory jurisdiction of the Industrial Court is extremely narrow and that the Industrial Court has no jurisdiction to reappreciate, reappraise and reassess the evidence recorded by the Labour Court. The Industrial Court, in its supervisory capacity, cannot substitute its own opinion for the opinion formed by the Labour Court on the basis of the evidence before it unless there is error of law apparent on the face of record and unless the conclusions are so perverse that no reasonable man would ever come to such conclusion. The same views are being reiterated in a recent case by Hon'ble His Lordship in a case of *Gajanan S/o. Shamrao Thakre* V/s. *Maharashtra State Road Transport Corporation, 2000-III-CLR-99* and *Hoechst Marion Roussel Ltd.* V/s. *Smt. Rhona Norena and another, 2000-II-LLN-503.* Since the principle in a case of *Vithal Gatlu Marathe (Supra)* has been considered by Hon'ble Lordship in both the cases, I have not reproduced the observations or the rule laid down therein. Following these precedents therefore, the forum available to the Industrial Court is obviously restricted but also gives a latitude to the Industrial Court for finding out any error apperent on the face of record in the field of law and facts. To conspire with these propositions, this Court will have to look into the evidence by the Trial Court as well as submissions put up before this Court in consonance with the documents made available and relied on by the parties befor the Trial Court. In short, though the Industrial Court cannot reassess the evidence the case lows referred above have not precluded the Industrial Court in looking into the evidence led before the Trial Court along with appriasing the approach of the

Trial Court to find out as to whether the Trial Court has properly given weightage to the documentary and oral evidence led before it. For the said purpose, this Court will have to look into the oral as well as documentary evidence in consonance with the conclusions drawn by the Trial Court by relying on such evidence.

13. As stated earlier the Trial Court has found the case in the complaint of no resignation but termination simplicitor. Therefore, the conclusions of the Trial Court so far as termination is concerned, will have to look into and reiterate the observations of the Trial Court while answering to the issues framed by him. In para 16, the Trial Court has observed that :—

> " There was a domestic dispute between the brothers and for the reason, it is submitted before him that the resignations are being submitted ".

On this set of fact, he has observed that the reasons put up for submitting the resignations are not considerable nor accepetale as no workmen would on the instigation of the employer would come forward and go away from his daily bread and butter. On the basis of which, it is pointed out that the termination by way of such resignation is by way of following of unfair labour practice. Learned Trial Judge has also resorted to comparing handwriting and thereby observed that the handwriting of the letter of Shri Jeeljit Tiwari and found that handwriting in the said letter and in the letter of Shri Amarjeet Tiwari is one and the same. Such conclusions were drawn by the Trial Court referring to the point that the Complainant has not explained who has written the resignation letters. Simultaneously, the witnesses have denied the signatures on the revenue stamp. The Learned Trial Judge has disbelieved the testimony of the witnesses of Respondent and posed those witnesses as got up and tutored witnesses. In short, the Trial Court has totally turned down the defence of the Respondent pertaining to the submissions of the resignation and thereby alowed the contentions of the Complainant.

14. These views has expressed by the Trial Court deserve to be considered on the basis of the other availabe evidence to find out as to whether the availeble evidence was properly valued by the Trial Court or not. It is apparently clear thet the Trial Court has formed his own opinion so far as handwriting, signatures and that the Respondents might have obtained the signatures on such letters subsequently styled as resignation letters, at the time of giving the appointment letters. These considerations shall play a major role to accertain as to whether the appreciation of the evidence made by the Trial Court was an appropriate or not. I have referred the observations relied on by the Learned Advocate Shri R. R. Yadav for the Revision Petitioner in a case of *Maharashtra Stata Road Transoort Corooration Vs. Abdul Usman Maboob Shaikh. 2000-III-CLR-320.* The rule therein scquarely lays down that what is expected of the Industrial Court even while exercising its revisional jurisdiction, is to record the rival contention and adjudicate the same on merits by recording a clear finding with regard to each contentions raised by the parties. Having followed the principles, I have referred the submissions of both the parties especially by the Respondent that there is no proper appreciation of evidence and therefore, the matter needs to be remanded back.

15. In pursuation to the above, I have referred to the oral evidence led before the Trial Court. Shri Amarjeet Tiwari led his evidence *vide* Exh. U-10 and points out that his signatures were obtained on the typed xerox papers having revenue stamp. The signatures were obtained by the Respondent No. 2 under the guise that the names of the employees are to be sent to the Government for making their services permanent. The witness asked for the attendance card etc. It is alleged that his services are terminated and also of the 9 employees without offering legal dues. Admittedly, the complaint is silent for obtaining signature on the letter head of the company from the employees but he points out that the signatures obtained on the letter head

at the time of recruitment and it was signed by him without reading the contents therein. It is also pertinent to note that the receipt of legal dues has also been denied by the witness. The witness Shri Jaljeeram Tiwari *vide* Exh. U-3 has reiterated the same. He has also denied that he received full and final settlement from the employer.

16. The case as made out by the Respondent to the extent of Girish Sachdev that of approach by the workers on 12th June 1998 and request him to settle the legal dues. Accordingly, the resignations were submitted by them.

17. Witness Shri Vijay Tibdewal is examined *vide* Exh. C-18 who has signed on all the receipts as well as on the resignation as a witness. It is pertinent to note that his presence at the relevant time at the petrol pump is hidden in the suspicious circumstances. It is partinent to note that this witness has no knowledge about any payment made to the workmen and about the receipts. He also does not know who has filled in the blanks in the impugned letters. The evidence of these two witnesses on behalf of the Respondent has properly been considered and construed by the Trial Court. The Trial Court has nowhere found to have jumped to the conclusion nor has found to have misled the fact or misapplied the legal position so far as consideration of evidence of these witnesses are concerned. In overall conclusions of the Trial Court that in any case, it is difficult to digest that bread earner resigned from the service without assigning any reason or without ascertaining with the colleagues or family members. The letters of resignation are enblocked and on the similar dates. This fact also shaken the confidence has tried to be placed by the Respondent by its conduct. In short, whatever evidence led by the Respondent is not by way of misleading the facts but appears to have expressed all his conclusions so far as such evidence is concerned. I have not found any apparent illegality in the total approach of the Trial Court while dealing with the resignation letters purported to have been given by the workmen. However, it appears that the entries in the Cash Book which are relied on by the Respondent appears to have not been referred to by the Trial Court. In my opinion, when the resignation letters itself are seen with the suspicious nature and that the Trial Court has disbelieved such enblock resignation letters by 10 of the employees. Therefore, merely not referring to the point of payment of legal dues in the observation will not vitiate the entire approach of the Trial Court. The submission of the Learned Advocate Shri Yadav that the Complainant could have amended the complaint when they have found that their resignations are forthcoming but in my view, the Respondent has submitted the resignation letters by way of defence by denying the allegations of oral termination raised by the Complainant. Therefore, the Complainant still reiterates the oral termination and intends to turn down the so called resignations pointing out that those are brought into existence subsequently by the Respondent. The Trial Court, therefore, has not committed any error apparent as seen from the observation.

18. The learned Advocate Shri Yadav emphasised much that the evidence as led before the Trial Court so far as resignation letters are concerned is without pleading. He has brought my attention towards Order 6 Rule 7 of the Civil Procedure Code besides the observation in a case of *Shankar Chakravarti* V/s. *Britannia Biscuit Co. and another, 1979 Supreme Court Cases 194.* While referring to the fact matrix, it is clear that the Respondents are retaliating the contention of the oral termination by pointing out that these employees have resigned from the services. Therefore, till according to the Complainant, the resignation letters are put forward in the case, the Complainant's members aggrieved workmen were not knowing that their signatures were also obtained on any other documents which were subsequently converted to the resignation letters of these aggrieved workmen. In the process, the Trial Court has rightly observed the issue and has considered the aspect about the nature of proceeding as

quacy civil and quacy similar. One cannot expect in the situation that the Complainant can presupposes the defence of the other side and submit in its pleading accordingly or otherwise go on amending his pleadings from time to time in view of the submissions of the Respondents changing from time to time. Much hue and cry has been made so far as not considering the documents on record. The documents such as pay-sheets, resignation letters along with receipts and details of payment made to the workmen on 12th June 1998 are on record. The said sheet is not signed by anybody. So also salary account. The entries in the Account Book Exh. C-16 refer to the payment made to the concerned employees by way of full and final settlement. Verifying the said entries, the Trial Court has answered para 18 that Dr. Ashok Tibdewal is having relation with witness No. 2 and thereby the witnesses are found to be tutored witness by the Trial Court. The conclusion drawn by the Trial Court is the conclusion on facts which were led before the Trial Court. Such inference based on the facts does not appear to be improper or illegal. The basic cause which is taken to its task by the Trial Court is that no workman will be ready to furnish his resignation without any cause. No sufficient cause is found by the Trial Court to compel the employees to submit the resignation and thereby the Trial Court found that there is an illegal termination and sense of following of unfair labour practice.

19. The Trial Court in the above sequence of instances occured, considered the facts on record referring to the material put up before him. I have not found any serious prejudice caused at the hands of the Trial Court and in the result, I have found that the Trial Court has not rather in holding that there is a termination of by way of following of unfair labour practice. There is also no error apparent with the hands of the Trial Court in granting the reinstatement with 50% back wages. I have found no reason to interfere with such other. Therefore, I have given my findings to the points raised accordingly and pass the following order :—

Order

(*i*) The Revision Application is hereby dismissed.

(*ii*) No order as to costs.

(*iii*) The Record and Proceedings called from the Trial Court be sent back forthwith.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 14th June 2002.

K. G. SATHE
Registrar,
Industrial Court, Mumbai.

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IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI.

BEFORE SHRI P. B. SAWANT, MEMBER

COMPLAINT (ULP) No. 308 OF 1985.—Association of Engineering Workers, 252, Janata Colony, Ram Narayan Narkar Marg, Ghatkopar (East), Bombay-400 077.—*Complaint*.—*Versus*—Anand Tanks and Vessels Pvt. Ltd., D-5, M.I.D.C., Street No. 16, Marol, Andheri (East), Bombay 400 093.—*Respondent*.

CORAM.— Shri P. B. Sawant, Member.

Appearances.— Shri Vinod Shetty, Advocate for Complainant.
Shri D. A. Athawale, Advocate for Respondent.

Order

1. Association of Engineering Workers (herein after referred to as the "Complainant") has filed this complaint against the Respondent alleging that the Respondent has indulged into an unfair labour practice within the meaning of items 1, 2, 3, 4 and 6 of Schedule II and Items 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. The facts which gave rise to the present litigation can be stated in nutsheel as below.

2. The Respondent is engaged in the business of Steel Tanks and Vessels and other fabrication work working in two shifts. It is alleged that to deprive the employees of their legitimate rights, the Respondent is also operating in the name of Sunita Engineering Private Limited in adjacent plot having employed about 30 employees. In the year 1978, the employees have joined the Complainant union but the services were terminated by which the union extinguished. Thereafter none of the employees made efforts to join any union and were compelled to tolerate various acts of harassment by the management. It is further alleged that the management came to know about the intention of the employees to form a union and thereby the management called the union activists and tried to pursuade them in not joining the Complainant union by inducing that the management will sponsor an internal union. The management gave threats of locking out or closure of the undertaking if the employees persisted to join the Complainant union. Inspite of these, the employees decided to join the Complainant union and accordingly, in April, 1985, they joined the union by letter dated 3rd April 1985 addressed to the management.

3. After having knowledge of formation of the union, the management started using inducement and threatening to the employees. The Personnel Manager personally came in the factory and compelled the employee to sign on the blank papers and also gave threats of dire consequences. On 8th April 1984, the employees have lodged a complaint with the Police Station and also informed the management by letter. On 9th April 1985, a meeting was held by the Production Manager Shri Zahir who pursuaded the employees from not join the union activity. On 11th April 1985, the management surprisingly removed four Welding Machines, raw material and semi-finished goods from the factory premises. The employees protested against the same. On 13th April 1985, the services of Shri Bhane were orally terminated and thereafter followed by removal of two employees from service. The management has also started transferring the permanent employees though there is no transferability clause in the appointment letter and also started choosing the employees and chargesheeting them. Again thereafter on 1st May 1985, the Respondent removed the raw material and machinery from the factory premises. On 2nd May 1985, the employees as usual went to the factory but they were assaulted by the outside goondas headed by Shri Yadav Personnel Manager. On 4th May 1985, the management prevented the employees from entering the factory premises and to do their usual work nor any

work was alloted to the employees though the employees were ready and willing to perform their work peacefully. The said refusal to work is amounting to lock-out, according to the Complainant. It is further pointed out that there is no notice as required under the Act. Therefore, it is not legal and the employees are entitled to wages for the entire period of lock-out in accordance with agreement of employment.

4. It is alleged that in the above circumstances, the management has followed unfair labour practice and the Complainant is entitled for the declaration to that effect and consequential directions. Hence, the complaint.

5. By way of amendment, the Complainant has further added that the Respondent company illegally terminated the services of employee by name Shri Jaiswan on 16th April 1985, without following due process of law. Whatever amount paid to Shri Jaiswan was not fully and finally settled in respect of the legal dues and those were earned wages as mentioned in the voucher. It is also pointed out that the Respondent has not allowed the employee Shri Bhane etc. for duty on 15th April 1985. No show cause notice, chargesheet or enquiry was conducted against those employees. The Manager of the Respondent informed the employees that their services are no more required. Such termination is illegal and bad in law as no procedure has been performed by the Respondent pretermination of the services of the employees Shri Chavan etc. It is further pointed out that the Respondent has not allowed rest of the 23 employees to resume on duty from 4th May 1985 who were regularly reporting for duty and offering them for work and placed a false case that these employees remained absent and did not report for duty inspite of sending individual letters to them. There is no show cause notice, chargesheets issued to them for so called absenteesm nor compliance under Section 25 F and 25G of the Industrial Disputes Act has been followed. Thereby the Complainant has prayed for reinstatement of these 23 employees also.

6. The Respondent has resisted the contention in the complaint by filing their written statement Exh. C-3 contending interalia that the averments advanced in the complaint are not true and correct. Those are false and frivolous and the complaint, according to the Respondent deserves to be dismissed. It is the first and foremost contention that the Complainant union is not competent to file the complaint. Therefore, this Court has no jurisdiction to entertain the complaint. It is also pointed out that the complaint is time barred. It is not maintainable under Section 59 of the M.R.T.U. and P.U.L.P. Act. Thereby it is prayed that no unfair labour practice has been merged from the contents in the complaint. Ultimately, the complaint deserves to be dismissed.

7. The Respondent admits that there are 130 employees in the factory and points out that on account of nature of assignment and type of expertised requirement from time to time, the Respondent is required to transfer its employees from one place to another and such practice is continuing since long. The Respondent company are contractors and Engineers who undertake turn key projects for the installation of sugar plants. As a contractor, the Respondent is responsible for erection and commission in the entire plant. The manufacturing activities are undertaken besides the other items are purchased from other manufacturers. The fabrication work is also being done at the sites. The Respondent admits the existence of Suneeta Engineering Private Limited in the nearby plot but points out that it is a separate legal entity and independent unit. The allegation regarding control of the Respondent over the said unit is denied. It is pointed out that the Respondent has always a cordial relations. The settlement was entered into after negotiations on 2nd June 1984 and wage rise was given and these settlements are still continuing. According to the Respondent, wages paid to the employees are

much higher than which is paid in other comparable concerns. It is denied that the company has intention to sponsor internal union. It is denied that the Respondent has threatened the employees in case of their joining the Complainant union. The allegations against the Personnel Manager and Production Manager are also denied. It is pointed out that due to urgency of work at two sites, *viz.* at Perner and Purenpur, the company decided to send 29 employees of these sites. Accordingly, 29 workmen concerned in the present complaint are transferred to these sites by granting them T.A. and Site Allowances etc. facilities. But the workers refused to accept the transfer letters and started agitating for cancelling the transfers. The Respondent has denied the allegations of removal of plant and machineries and raw materials on the dates mentioned in the complaint. The removal of vessels was as per the pursuation of the customers and by looking into their urgency but the workers were under impression that they can do anything and everything obstructed the said transportation. The Respondent filed a complaint in the Industrial Court bearing Complaint (ULP) No. 240 of 1985 and ad interim stay was granted against gherao and picketing. It is pointed out that the company has every right to transfer the employees from one place to another. It is denied that the employees were chosen for transfers. The termination of services of the employees have been styled by the Respondent as legal and proper. the 59 employees who refused to go on transfer, were chargesheeted for the acts of misconduct. The employees after refusal to accept the transfer, have indulged into violance to pressurise the management and withdraw the transfer orders.

8. It is denied that the Respondent has declared a lock-out in the factory. It is also denied that the Respondent has refused to give work to the workers. It is pointed out that there is no lock-out as such as alleged. There is no question for paying full wages to the workers as they were chargesheeted and suspended for pending enquiry. Since there was no lock-out, there is no question of lifting the same or paying wages. The real facts are being twisted by the Complainant union. Therefore, on these and other grounds, it is prayed that the complaint be dismissed.

9. The Respondent has further submitted *vide* additional written statement Exh. C-18 in view of the amendment effected by the Complainant in the complaint. It is denied that whatever allegations made in the additional paras of the complaint are totally illegal and incorrect. It is pointed out that the Complainant is alleging illegal lock-out as well as illegal termination which do not stand on a legal footing. It is pointed out that no breach of any settlement has ever been committed by the Respondent and therefore, none of the items are attracted.

10. The allegations that the Respondent has not allowed 23 employees to resume duty with effect from 4th May 1985 has been denied. It is denied that the workers were reporting for duty regularly. The provisions under Section 24(*2*)(*b*) are wholly in applicable and irrelevant to the issue involved in the complaint. It is pointed out that the names of 23 workmen were struck off in accordance with the provisions of the Model Standing Orders. The Respondents have reitarated that the complaint is hopelessly time barred. The original case put up by the Complainant is of illegal lock-out and it cannot be now drafted with the allegations of illegal termination. Therefore, it is contended that whatever contentions raised by the Complainant are to be rejected and consequently, the complaint should be dismissed.

11. On these averments, issues were framed at Exh. C-4 by my learned predecessor. Those were subsequently recasted on 5th December, 1996. Those are as follows :—

Points	*Findings*
(1) Does the Complainant prove that the Respondent has committed all or any of the unfair labour practices as alleged by the Complainant in the complaint ?	Proved as per items 1, 4, 6 of Schedule II and item 9 of Schedule IV.
(2) Whether the grievances made by the Complainant about their alleged illegal termination falls under item No. 9 of Schedule IV and whether the Industrial Court has jurisdiction to try such illegal termination ?	Already answered.
(3) If yes, whether the case of illegal termination is within limitation ?	Already answered.
(4) Whether the 23 workmen mentioned in the list dated 8th November, 1996 (filed with amendment application) are entitled to alleged lock-out wages for the period 4th May, 1985 to alleged termination dated 2nd September, 1985 ?	As per final order.
(5) Whether the workers enlisted in amendment complaint, prayer 10(*f*)(*i*) are entitled to reinstatement in service and back wages from respective dates of termination ?	Yes.
(6) Whether 23 workmen are entitled to such relief of reinstatement from 2nd September, 1985 ?	Yes.
(7) Whether all the concerned workmen are entitled to earned wages from April, 1985 ?	As per final order.
(8) What order ?	As per final order.

Reasons

12. Before initiating the marshaling of evidence, it is necessary to point out certain prominent previous instances which are touching the merits of the matter. The present complaint was initially being decided by my predessor Shri G. S. Baj then Member, Industrial Court on 20th April 1995. He was pleased to allow the complaint and granted all the consequential reliefs. Thereafter, a Review Petition was preferred bearing number Review Application (ULP) No. 12 of 1995 before the said Member, Industrial Court. The maintainability of the Review Application was challenged and by an order dated 5th July 1995, then Member, Industrial Court has held that Review Application is maintainable as well as directed that the hearing of the Review Application is expediated. Accordingly, hearing of the Review Application was taken place and the application was decidead finally on 11th October 1996. By the said order, then member, Industrial Court has aside his earlier order dated 7th April 1995 for the purpose of reviewing the same and the original Complaint (ULP) No. 308 of 1985 was restored to its original file. Thereafter, the complaint came before the suceessor of the earlier Member, Indistrial Court and it was finally decided on 19th June 1998 and then Member was pleased to dismissed the complaint by its order.

13. Being aggrieved and dissatisfied with the said order, a Writ Petition was preferred and the Hon'ble High Court has considered the entire situation and Hon'ble His Lordship was pleased to remand the matter with certain directions for decision of this Court on a particular issue. The question of jurisdiction of the Industrial Court to adjudicate the entire issue was under consideration and therefore, Hon'ble His Lordship was pleased to set aside the order dated 19th June 1998 regarding dismissal of the complaint to the extent of issue No. 2 raised in the order of the Industrial Court and for that purpose, the matter has been remanded back to this Court with direction that the Industrial Court shall adjudicate on the said issue as early as possible.

14. So far as issue which was remanded back to this Court spells out as below :—

"Whether the grievances made by the Complainant about their alleged illegal termination falls under item 9 of Schedule IV and whether Industrial Court has jurisdiction to try such illegal termination ?"

This particular issue when was referred to this Court under order of remand the findings given by the Industrial Court on the other issues have been kept in tack. The directions are to concentrate on this issue only so far as illegal termination is concerned. The relevant observations of Hon'ble Lordship are clarifying the situation. Those are as follows :—

"The issue relating to the alleged termination of 23 workers of the Petitioner lest they should be forced to take lengthy recourse under the judgment of the Industrial Court to go to the Labour Court and file a fresh complaint. I may also make it clear that except for this issue or other findings of facts recorded by the Industrial Court are found to be based on evidence available on record and therefore, need not be disturbed in any way whatsoever."

15. It is further observed in the said order that :—

"The impugned order dated 19th June 1998 dismissing the complaint is set aside only to the extent of issue No. 2 raised in the order of the Industrial Court holding that it has no jurisdiction to try the issue in respect of alleged illegal termination of 23 workers of the Petitioner. For that purpose, the matter is remanded to the Member, Industrial Court for adjudication on the said issue."

In the given circumstances, the findings given by the Industrial Court so far as the limitation and following of unfair labour practice will have to be kept as it is though the then Memer, Industrial Court has not observed any of his views so far as the points involved in it are concerned. Having regard to these observations and the facts, thereunder, I have referred to the evidence led on record alongwith the observation of Hon'ble Lordship. The issue, therefore, needs to be concentrated as to whether the employees who were forced to remain out of employment or they themselves absented from duty. The general principle that even in a case of continuous absenteesm or punishment of service, there has to be an enquiry. Under these principles, the situation as arisen will have to be viewed and valued.

16. The instances as occured are being narrated before the Court during the course of argument, by the Complainant. It appears that in April, 1985, the workmen joined the Petitioner union. Thereby the company started victimising the employees. Immediately on the next month *i.e.* May, 1985, the employees were locked out. A complaint came to be filed bearing Complaint (ULP) No. 308 of 1985 under items 1, 2, 3, 4 and 6 of Schedule II and items 9 and 10 of Schedule IV. The same has been decided on 7th April 1985. The relevant observations reflecting from the record that the management has not disputed that no action has been taken against the employees and the management under one or the other pretext, seems to have prevented them from

reporting on duty. The transfer orders etc. have been made. These are the circumstances when the complaint was initially decided by the then Member, Shri Baj. On 8th June 1995, a Review Application was filed. On 5th July 1995, the Review was allowed. Then amendment application was filed and the amendment was allowed as initiated by the company and on 18th November 1995, the complaint also came to be amended. The evidence recorded on behalf of the company has been reckoned and certain documents which were produced by the company on record were allowed to produce though at a late stage, has caused prejudice to the Complainant union. These are the basic allegations of the union while submitting the case before the Hon'ble High Court.

17. The entire process of reviewing the order as initially being exercised by the then Member, Industrial Court has also been made a cause for agitations. Therefore, it has been emphasied that even under item 9 of Schedule IV or even in case of items of Schedule II, the Court can look into the cases of termination. On the above background, when the facts on record are taken into consideration, the termination of services of Shri Jaiswan, Shri Bhane, Shri Yadav, Shri Chavan has been considered as because there is an oral termination. Therefore, the contentions have arrived that the termination is against the provisions of the Model Standing Orders. Schedule II of Items 1 to 4 of M.R.T.U. and P.U.L.P. Act deals with as follows. To interfere with items 1, 2. Item 3 deals with establishing employer sponsored union. While item 4 deals with making discrimination against the employees to discourage or incourage the membership of any union by discharging or punishing the employees dismissing the employees etc. While item 6 is of continuing a lock-out deemed to be illegal under the Act.

18. The evidence on record that *vide* Exh. 8 annexed to the report of the Commissioner appointed for recording evidence of the witness of the company, is disclosing the list of 27 workmen. The emphasis made by the Complainant is on the point of not issuing any chargesheet or making no enquiry against these workmen which includes 4 of the employees referred above. The termination of service of the employees Shri Yadav and Chavan etc. is the repurcation of the formation of the union. Therefore, when the action taken by the company has no where been denied by the company, the existence of the union brought into, itself is sufficient to ascertain the unrest in the employees. Therefore, instead of specifying the unrest, it appears that the Respondent has become restless on the formation of the union and thereby certain steps seem to have been resorted.

19. The Complainant union has pointed out several instances occured on the part of the Respondent and asserted that all these instances are the resultant outcome, the intention expressed by the workmen to form a union. At this juncture, it is not necessary for me to indulge into the said activity alleged against the Respondent. But the fact that the employees are required to remain without work is required to be reckoned as because the same issue needs to be adjudicated.

20. The Respondents have vehemently pointed out that the striking off names of the employees is as per Standing Order No. 13(4). The striking off the names of the employees is, therefore, on account of those 23 workmen nor reporting for duties. It is the only intention that these 23 employees have merely lost their lien on their jobs on account of striking off their names. This action intends to be justified by the Respondent by pointing out that these employees have voluntarily abandoned the services of the Respondent. In my opinion, therefore, principle referred above in a case of abandonment of service shall apply here also. The failure on the part of the employer for holding an enquiry on account of absenteesm, therefore, appears to be resultant outcome of the formation of the union *vis-a-vis* suspention of certain employees followed by dismissal of the set of employees who were having connections with the instances of roiting.

21. Apart from the above contention, the Respondent still reiterated that individual letters were sent to the employees for resuming the duties when these 23 employees were found not reporting for duty. The earlier to that instance of transfers effected by the Respondent at the other Divisions at Parner and Purenpur has been referred to and the evidence on record indicates that the employees have shown their unwillingness to resume the place where they have been transferred. The issue of transfer though not before me for adjudication, it has to be taken into consideration as the instances of transfering the employees appears to have been occured after the intention expressed by the employees to form a union. The allegations of the Respondent, therefore, that the employees have resorted to a violent incident and thereby lakhs of rupees have been sustained by the employer. It has resulted into suspending the employees and other instances of indiscipline behaviour. It appears from record that the suspension of workers was effected in groups and though suspended employees were sitting together near the factory. The situation was, therefore, construed by the Respondent and has pointed out that 23 employees who were not reporting for duty were in fact, prohibited from joining the duties by those suspended employees. In other words, the Respondent has accepted that the employees 23 in number were there near the factory gate and were about to report for duty.

22. The above fact by which the para was concluded, it is clear that even the Respondent is accepting the position of these 23 employees reporting for duty. If this is the position, then the question for these 23 employees' not reporting for duty or absenting themselves from duty will not arise. Therefore, when the question of absenteesm has not been emerged, then the conclusions drawn by the employer for himself regarding abandonment of service by the employees will also not stand on merits.

23. The termination of service of 4 of the employees out of 27 appears to be prior to filing of the complaint *i.e.* to 16th May 1985. Those 4 employees have raised industrial dispute pertaining to their termination even, prior to filing the complaint. Therefore, on the fact martix the cause for these 4 workmen named above admittedly, cannot be adjudicated so far as the cause of 23 employees are concerned. It is the contention of the Respondent that absence of pleading that 23 concerned employees were the office bearers or active union members, their cause for agitations will not survive. In other words, the Respondent intends to emphasis that the action against these 23 employees has not been taken because of their union activities only. To substantiate the termination of these 23 employees, the Respondent placed reliance on the individual letter correspondence dated 21st June 1985 and 29th July 1985 and called upon them to report for duties. Therefore, it has been reiterated that these employees were restrained by their co-workers who were sitting outside the factory gate. So far as the contention of the Respondent for accepting the position that these 23 employees were prevented from joining the duties, I have already expressed my views. So far as letter correspondence is concerned, the question on receipt of those correspondence will have to be taken into consideration because on 4th May 1985, sole allegations against the company that these workers were not allowed to enter the factory premises for carrying out the work apart from the earlier instances might have occured in the premises of the company. The allegations of non-payment of wages will be considered at a later phase.

24. By virtue of this proposition, I have concentrated on the text used while drafting Section 24(*2*)(*a*) of the M.R.T.U. and P.U.L.P. Act. It lays down that :—

> "Illegal lock-out means a lock-out which is commenced or continued without giving to the employees a notice of lock-out in the prescribed form or within 14 days of giving of such notice."

Admittedly, there is no notice as such within the meaning of Section 24(2)(a). However, the intention of the lock-out as averred by the Complainant has to be sensed from the activities of the parties. The Respondent asserts that the employees have not reported for duties. The offer was made open by the Respondent for these employees to resume duties. But still then, the co-employees, according to the Respondent, have prevented these 23 employees. While concentrating on these submissions and carving out the real fact matrix, lead me to hold an opinion that the question of illegal lock-out is not under consideration but the only fact which is under my consideration is as to whether these employees were prevented from joining the duties. Admittedly, by virtue of the Respondent's accepting the proposition of these 23 employees were prevented by their co-employees itself is sufficient to hold that these workers were ready and willing to join their duties but were not able to join it.

25. So far as prevention used against these 23 employees is concerned, the same fact has totally been denied. The oral and documentary evidence led by the Complainant, therefore, in the situation needs to be construed to find out the real controversy amongst the parties.

26. Shri S. S. Yadav is examined by the union *vide* Exh. UW-2 and explained how and what manner the prevention was used by the Respondent against these employees. It appears from his evidence that these workers were dodging by the Respondent from one day to another day under the guise of allowing them to resume the duty on the next day. The evidence of Shri V. Narayanan examined on behalf of the company *vide* Exh. C-13. He has explained several aspects about the contracts entered into with the company as the company requires to comply the terms of contract failing which heavy penalty will be imposing. He has pointed out to finish the work at the various sites as per the contract, the company was required to transfer the employees from place to place. However, since those employees who were transferred according to the exigencies of work, have not reported for duty. Besides the evidence of Narayanan, I have referred to the documents and letter correspondence produced along with Exh. U-18 and Exh. U-19 which refers to the complaint filed with the Police Station so far as alleged incident of riot and assaults on the workers. It is affirmed by the witness examined in the Court on behalf of the Complainant Shri D. S. Harchekar that on 2nd and 4th May 1985, the employees have worked in the factory but thereafter, the employees were not allowed to report for work stating that the company has been closed. I have referred to these submission by perusing letter dated 4th May 1985 Exh. 21 by which the union has raised up laws against so called illegal lock-out. Thereafter, the employees are reporting for duty but of no avail. Having regard to these factom, it is very clear that the Respondent has not resorted to hold any enquiry against the employees. The Respondent by conduct, precluded these 23 employees from continuing to work. The present complaint being restricted to the part of the said termination of these 23 employees. Therefore, the question of other set of employees will not come into.

27. In pursuance with the above contention, the process of adjudication, therefore, clarifies that the Respondent without resorting to legal procedure have adopted a mode of restraining these 23 employees from joining the duties and thereby deprived them from their wages.

28. In the context of the directions of the Hon'ble High Court, I have concentrated my submissions on the adjudication process only. Therefore, when the employees are having unfettered right to organise, from joining a trade union or to concerted activities for the purpose of collecting bargaining, then the employer if found having made efforts to retract these employees from joining a union will definitely attract the items as alleged. It is pertinent to note that though the Respondent has not declared a lock-out by written order or notice but from the conduct on the part of the Respondent itself is sufficient to reckone the intention of the employer. The lock-out, therefore, as seen from such conduct is attracting item 1 of Schedule II of the Act.

29. It is evident from record that the settlements were entered into in the year 1981 and 1984. It will not necessarily reflect that the management has resorted to or intending to have a management sponsored union as well as it will not establish that the management has sponsored its own union. So far as item 4 is concerned, 23 employees who are being not allowed to join duty amounting to effecting lock-out for those 23 employees besides amounting to discharing them. The punishment of refaining these employees from joining the duty itself is sufficient enough to construe that item 4 of Schedule II has been attracted.

30. So far as continuing a lock-out is concerned, as stated earlier, there is no notice but prohibition against the employees is emerging out of the conduct. Therefore, item 6 also attracts.

31. Item 9 of Schedule IV relates to failure to implement award/settlement or agreement. While item 10 deals with employer's indulging into an act of force or violence. The normal contract of employment reflects that an employee who offers himself for work shall be given work and be paid wages. The evidence on record indicates that the employees who were reporting for duties as well as they were not being chargesheeted, suspended or were under any show cause notice were not allowed to resume on duty. The evidence on record reflects about the approach made by these employees to the management for the relief of work. Denying the said opportunity to these employees for resuming the work under the guise that these employees themselves are being prevented by their co-employees itself is sufficient to hold that the employer has followed unfair labour practice under item 9 of Schedule IV.

32. So far as item 10 is concerned, it is difficult to assail at this juncture that it was an employer who has resorted to violence or riots in the company. The situation was such that there are allegations against each other *vis-a-vis* police complaints are filed against each other. With this context, it will not be just to hold that the employer is responsible for whatever violence appears to have occured and therefore, during the entire process of adjudication, I have found sufficient force in the contention as submitted on behalf of the Complainant.

33. The learned Advocate Shri Shetty has relied on catina of judgments to substantiate his submission so far as the act of the employer is concerned. Hon'ble Apex Court in a case of *State Bank of India* V/s. *N. Sundaramoney 1976-I-LLJ-478* have dealt with the question of termination of an employee pertaining to the mode of termination and also by referring to Section 25F and Section 2(oo) under the Central Act. The views expressed by Their Lordships are referring to the word used in a statute "termination for any reason whatsoever" and points out that the service can be terminated where term expires either by the active step of master or the running out of the stipulated term. To protect the weak against the strong, the policy of comprehensive definition has been effectuated. It appears that learned Advocate Shri Shetty intends to point out by referring to these observations that since the employer has not given work to these 23 employees, it is amounting to terminating their services by conduct of the employer, that too, without following due process of law. In a case of *L. Robert D'Souza* V/s. *The Executive Engineer, Southern Railway and another, 1982 (44)-FLR-250.* Hon'ble Apex Court has construed the words retrenchment by referring to the words used while drafting Section 2(oo) and held that discharge from service otherwise than the reasons shown under Section are amounting to a retrenchment. In a case of *Delhi Cloth & General Mills Ltd.* V/s. *Shambhunath Mukherjee and others, 1978-I-LLJ-1 Supreme Court.* Hon'ble Their Lordships have also held that striking off the names from the Muster-roll on account of absence from duty for 8 days amounts to termination of service and non-following of prerequisite conditions for such retrenchment will make the said termination as neugatory.

34. In the above situation and the facts on record, the observations of our High Court in a case of *The Premier Automobiles Employees' Union & Ors.* V/s. *The Premier Automobiles Ltd. & Ors., 1987-I-CLR-302* will have to be taken into consideration. The observations relate to the implied agreement between the employer and the employee that the employer was bound to supply work and employee shall entitled to receive the wages. The relevant observation of His Lordship makes the entire situation clear as it envisaged that the employee shall make himself available to the employer to do his work and that the employer shall pay the employee wages for doing so. Failure to pay wages when an employee has made himself available to do the employer's work, is a breach of the agreement between them. That the employer has no work for the employee to do, does not cause a suspension of his obligation to pay wages to the employee. In such situation, Hon'ble Lordship has held the employer as guilty of the unfair labour practice of not implementing his agreement with the employee. These observations, therefore, scquarely apply to the instant case. The rule goes to the root of the matter. While considering the observation, there is no question for negativing the point that item 9 does not attract. Therefore, I held that item 9 scquarely applies in the given situation.

35. Coming back to the actual fact on record, the approach of the employees to the Respondent is well versed from the evidence. The contention of the Respondent regarding sending letters are concerned, the Respondent has relied on those letter correspondence *vide* Exh. C-19. The letter at Sr. No. 2 is by the union dated 21st June 1985 making it clear that the employees are attending the duties regularlly but were obstructed by the Watchman and Police from entering the premises. The union has specifically pointed out that the letter sent by the employer dated 20th May 1985 is referring to the so called absence of the workers from 4th May 1985 onwards. The reply to the letter, therefore, clear to indicate that the workers were reporting for duty and also clarifies the situation at the factory gate which has caused hinderance to the employees for their reporting for duties.

36. In the result, I have given my finding to the points accordingly and pass the following order :—

Order

(*i*) The complaint is partly allowed.

(*ii*) It is hereby declared that the Respondent has followed unfair labour practice under items 1, 4 and 6 of Schedule II of M.R.T.U. and P.U.L.P. Act, 1971 and item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) Consequently, the Respondent is directed to desist from continuing to follow the unfair labour practice by allowing 23 employees to resume on duty and shall pay them their wages from the date they were being prevented from joining the duty till the date of their actual resumption on duty.

(*iv*) The Respondent shall comply the order within two months from the date of this order.

No order as to costs.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 18th May 2002.

K. G. SATHE
Registrar,
Industrial Court, Mumbai.
Dated 14th June 2002.

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INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 86 OF 2002 IN COMPLAINT (ULP) No. 239 OF 1999 and MISC. APPLICATION (ULP) No. 14 of 2000.—Balkrishna Sudam Uparkar, 1/94, Jabhawanti Chawl, Maharashtra Nagar No. 1, Y.B. Chavan Marg. Mankhurd, Mumbai 400 088.—*Applicant.*—*Versus*—The General Manager, B. E. S. T. Undertaking, BEST Bhavan, Mumbai-400 001.—*Opponent.*

In the matter of Revision Applications U/s. 44 of the M.R.T.U. & P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri S. Z. Chowdhary, Ld. Advocate for the Applicant.

Shri P. V. Dhoble, Ld. Advocate for the Opponent.

Oral Judgment

(Dated 28th June 2002)

The present Revision Application is preferred by the Original Complainant Mr. Uparkar feeling aggrieved of the order dated 19th September 2000 whereby the 11th Labour Court dismissed the Application Exh. U-2 for condonation of delay in filing the Complaint and ultimetely dismissed the main complaint. Applicant has also challenged the order dated 6th February 2002 whereby the 11th Labour Court dismissed the Misc. Application (ULP) No. 14 of 2000 which was filed for setting aside the *ex-parte* order dated 19th February 2000.

2. The brief facts giving rise to the case may be stated as follows :—

It is seen that the Complainant Shri. Uparkar was working with the BEST Undertaking as a 'Cleaner'(MU) *w. e. f.* 10th December 1991. He was charge-sheeted under S. O. 20 (t) engaging in other employment whilst still in the service of the Undertaking without the previous permission of the General Manager provided that such permission will not be refused if such other employment does not adversely affect the performance of the Undertaking. S. O. 20(h) "breach of any standing order or any law applicable to the Undertaking or any rules made thereunder" and under S. O. 20(zg) " knowingly giving false information regarding name, age, father's name, qualifications, previous service, his antecedents or experience at the time of recruitment or employment in the Undertaking." After the Departmental enquiry he came to be dismissed *w. e. f.* 20th September 1996. The delinquent employee did not prefer the departmental appeals and directly approached the Labour Court by filing Complaint (ULP) No. 239/1999 on 3rd April 1999 thereby alleging unfair labour pratice on the part of the BEST Undertaking and prayed for the reliefs mentioned in the Complaint and particularly to set aside the order of dismissal and to reinstate him with full backwages and continuity of service *w. e. f.* the date of termination *i. e. 20th September 1996.*

3. It is seen that there was a delay in filing the Complaint of about 2 years, 3 months and 12 days and for that purpose the Complainant preferred Application U-2 to condone the delay. In the said Application, Applicant submitted that immediatey after the termination, the Complainant had handed over all the papers to the Union *i. e. BSET* Workers Union for filing appropriate proceedings against the said termination. It is contended that he had no source of income and therefore he preceeded to his native place alongwith his family. One of the submission was that when the Complainant's father learnt about the dismissal of the Complainant, he got mental shock and he was missing and hance it was not possible for the Complainant to come to Mumbai. The Applicant further states that after 7 months, his father returned home in a very critical condition due to which the Complainant had to remain at native place for medical treatment of his father, who later on died because of sickness.

4. The another contention of the Applicant is that because of the death of his father, his mother also became sick and for her treatment, he had to remein at his native place. After the improvement in the health of his mother, the Applicant came to Mumbai and visited the Office of the Union on several occasions, but he was informed that his papers were not traced. In the meantime he preferred Mercy Petition before the BEST Committee on 9th January 1998 which was rejected *vide* letter dated 18th March 1998. Even thereafter he repeatedly approached the Union, but his efforts proved unyielded. The Complainant also states that by his letter dated 13th February 1999 he applied to the Respondent Undertaking for copies of the enquiry proceedings and the findings of the Enquiry Officer and the same were issued to him on 26th February 1999. Thus on these and other grounds, the Complainant states that there is a delay in filing the Complaint and therefore the same be condoned because he has got good case on merits and there will be no loss or prejudice to the Opponent Undertaking if the same is condoned.

5. The BEST Undertaking resisted the Application by filing reply Exh. C-2 dated 21st December 1999 and it is contended that the application for condonation of delay is vague and without any substance and it is devoid of merits. It is submitted that the Complainant ought to have been vigilant in prosecuting the legal remedies before the appropriate Court. It is denied that he had tried to approach the Union for taking out a case before the appropriate Court and according to Opponent the grounds taken out by the Complainant are without any substance and because of his carelessness, there is a delay in filing the Complaint. The another contention is that if the application for condonation of delay is granted, great loss and prejudice will be caused to the BEST undertaking and it is asserted that there is total negligence on the part of the Complainant and hence the delay has not been explained properly and giving particulars alongwith the documentary evidence. Thus the Respondent requested to dismiss the application.

6. Record further reveals that the Complainant preferred Restoration Application (ULP) No. 14 of 2000 on 25th October 2000 for setting aside the order dated 19th September 2000 contending that the Labour Court has *exparte* passed the earlier order without giving an opportunity to the Complainant. The Complainant further states that he was attending almost on every day alongwith his Advocate. The main grievance is that on 5th September 2000 though the Applicant was present alongwith the Advocate before the Court, his Advocate recorded in his diary that matter was adjourned to 19th September 2000. On the said date, he attended the matter and as the old matter was before the Labour Court, the COC informed that it was on board of the Court on 18th September 2000 when the representative of the Opponent had argued the application for condonation of delay and the same was adjourned to 19th September 2000 for orders and the same has been dismissed. In substance, it is the case of the Complainant that he applied for certified copy of the order dated 19th September 2000 on 22nd September 2000 and he received the same on 28th September 2000. It is stated that his absence and that of his Advocate was not intentional and deliberate. According to him, he was seriously interested in prosecuting the matter and therefore prayed that the order passed below Exh. U-2 dated 19th February 2000 be set aside.

7. The BEST undertaking by filing a Reply at Exh. C-1 resisted the Application and thereby contended that the application of the Complainant is baseless and not maintainable in law as there is no provision under the M.R.T.U. & P.U.L.P. Act to file such an application against the order of the same Court. The another contention is that the Applicant may challenge the said order in the higher Court and not before the same Court. Thus in short, it is submitted that the application be dismissed.

8. I have called for the record and proceedings and gone through the same. Heard Mr. S. Z. Chowdhary, Ld. Advocate for the Applicant and Mr. P. V. Dhoble, Ld. Advocate for the Respondent. The following points arise for my determination with my finding thereon, as below :—

Points :—

(1) Whether the Revision Application (ULP) No. 86/02 is to be allowed for setting aside the order dated 19th September 2000 in Complaint (ULP) No. 239/1999 and order dated 6th February 2002 in Misc. Application (ULP) No. 14/2000 ?

(2) What order and relief ?

Findings :—

Point No. 1 :—Yes.

Point No. 2 :— Please see order below.

Reasons

9. *Point No. 1 :*—Rrecord and Proceedings reveal that Complainant Shri Uparkar was dismissed on 20th September 1996 after the departmental enquiry and hence he has filed Complaint (ULP) No. 239/1999 on 3rd April 1999 alleging unfair labour practice on the part of the Respondent BEST undertaking and in the said Complaint prayed for setting aside the dismissal order and to reinstate him with full backwages, etc. As there was a delay of 2 years, 3 months and 12 days in filing the Complaint, the Complainant has taken out application Exh. U-2 for condonation of delay. The said application, as detailed earlier, was resisted by the BEST undertaking by filing reply. On a bare perusal of the order dated 19th September 2000, it shows that when the matter was called out, at that time the Complainant and his Advocate were not present and the Labour Court heard the Ld. Legal Advisor for the Respondent BEST undertaking and dismissed the application for condonation of delay. Now the main grievance of Mr. S. Z. Chowdhary, Ld. Advocate for the Applicant is that in fact in the matter the COC had given the dated 18th September 2000, but the Advocate wrongly recorded the dated 19th September 2000. According to Mr. Chowdhary, the Labour Court in the absence of the Complainant and his Advocate, delivered the judgment in the morning session and when the Advocates went to the Court and enquired into the matter, by that time the judgment was already delivered. The another contention of Mr. Chowdhary is that in fact the Complainant wanted to give oral evidence and to produce some of the documents to show as to how there was a delay in filing the Complaint, but the said opportunity has not been given by the Labour Court. Thus it is canvassed that the observations made by the Labour Court that the application for condonation of delay is vague and there is no supporting evidence put on record are not proper and the Labour Court should not have straighteway dismissed the application in the absence of the Complainant and his Advocate, which has ultimately caused prejudice to the Complainant thereby depriving him of hearing the Complaint on merits. The second contention of Mr. Chowdhary, Ld. Advocate for the Applicant is that atleast the Labour Court should have set aside the order dated 19th September 2000 when specifically Misc. Application (ULP) No. 14 of 2000 was preferred and the same also came to be rejected by the Labour Court. In view of the above position, Mr. Chowdhary stressed that both the orders passed by the Labour Court be set aside and the application for condonation of delay be heard afresh by the Labour Court.

10. On the contrary, Mr. P. V. Dhoble, Ld. Advocate for the Respondent strongly opposed the submissions advanced by Mr. Chowdhary and stressed that the impughed orders passed by the Labour Court are consistent to the record and when particularly the Complainant and his Advocate failed to attend the matter and produce the evidence before the Labour Court on the point of condonation of delay, there was no alternative left to the Labour Court but to decide the application on merits. In short, Mr. Dhoble urged to dismiss the Revision Application.

11. It is significant to note that at this stage it will not be proper to go into the merits and de-merits regarding the grounds mentioned by the Complainant in the Original Application Exh. U-2 for condonation of delay. It is because the Labour Court has decided the said application in the absence of the Original Complainant and his Advocate. The cause shown by Mr. Chowdhary, Ld. Advocate for the Applicant is that he could not take down the dated 18th September 2000 in his diary and therefore he could not inform the Complainant and personally he also remained absent. As per the submission of Mr. Chowdhary, when he enquired with the COC of 11th Labour Court on 19th September 2000, he informed that in the morning session the Labour Court has disposed of the application Exh. U-2 by delivering the judgment. It is seen that feeling aggrieved of the said order, the Complainant has preferred Misc. Application (ULP) No. 14/2000 to set aside the aforesaid order by giving detail reasons therein, but unfortunately the Labour Court after hearing the parties also dismissed the said application by order dated 6th February 2002. It is to be noted that though the Complainant and his Advocate on the given date were not present and in their absence, the earlier order came to be passed, but from the subsequent application for setting aside the order, it shows that the Complainant is very much keen to contest his application for condonation of delay and even the Original Complaint (ULP) NO. 239/1999, otherwise the Complainant would not have preferred the subsequent Application (ULP) No. 14/2000 for setting aside the earlier order. The Labour Court in fact ought to have given a chance to the Complainant to adduce oral and documentary evidence in support of the application for condonation of delay, but the same has not been given. The application should have been decided on merits by giving appropriate opportunity to the concerned parties. In the absence of such opportunity, it has caused injustice to the Complainant to get the application for condonation of delay decided on merits.

12. I am aware that Mr. Dhoble at the time of argument canvassed that there is no provision for preferring Restoration application for setting aside the earlier order dated 19th September 2000. The said submission cannot be accepted for the simple reason that U/s. 31(*2*) of the M.R.T.U. & P.U.L.P. Act, 1971 there is a provision for setting aside the *exparte* order and if the Court is satisfied that there was a sufficient cause for non-appearance, in that case, such *ex-parte* order can be set aside. The another point canvassed by Mr. Dhoble is that the implugned order dated 19th September 2000 is passed on merits by giving reasons thereto. The said submission of Mr. Dhoble is difficult to be accepted because as detailed above, the Court has in para 11 clearly mentioned that when called out, the Complainant and his Advocate were absent and hence the Court proceeded to dispose of the application U-2 in their absence. Meaning thereby deciding the said application cannot be said to be on merits unless the Complainant and his Advocate is given a chance to adduce oral and documentary evidence, as detailed earlier. Hence by exercising the powers U/s. 44 of the M.R.T.U. & P.U.L.P. Act, the impugned orders passed by the Labour Court deserve to be set aside in the interest of justice for giving appropriate opportunity to the Applicant herein to contest the application Exh. U-2 for condonation of delay on merits. Thus in consequence of the aforesaid observation, the subsequent order rejecting the application Exh. U-1 in Misc. Application (ULP) No. 14/2000 for setting aside the earlier order also deserves to be set aside. In view of the aforesaid observations, the dismissal of the Complaint (ULP) No. 239/1999 also deserves to be set aside. Hence, I answer the Point No.1 in the Affirmative.

13. *Point No. 2 :*—In view of the foregoing reasons and finding on Point No.1, I pass the following order :—

Order

Revision Application (ULP) No. 86 of 2002 is allowed.

The impugned orders dated 19th September 2000 and 6th February 2002 are set aside.

Complaint (ULP) No. 239/1999 is restored on the file of 11th Labour Court and the Labour Court to decide the application Exh. U-2 for condonation of delay by giving opportunity to both the sides by the end of July 2002.

Parties and Advocates are directed to appear before the 11th Labour Court on 10th July 2002 at 11-00 a. m. and co-operate the Court for disposal of application Exh. U-2 by not taking unwarranted adjournments.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
Dated 28th June 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated 5th July 2002.

INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI.

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 50 OF 2002. IN COMPLAINT (ULP) No. 401 of 2001.—M/s. Meridian Trading Pvt. Ltd., Plot No. C-4, Street No. 11, MIDC, Andheri (E), Mumbai-98.—*Applicant.*—*Versus*—(1) Shri Rajendra Vir Singh, Bhim Nagri, Asalfa Village, N. S. S. Road, Ghatkopar, Mumbai-84, (2) 11th Labour Court, Mumbai.—*Respondents* and REVISION APPLICATION (ULP) No. 51 of 2002. IN COMPLAINT (ULP) No. 402 of 2001.—M/s. Meridian Trading Pvt. Ltd.—*Applicant.*—*Versus*—(1) Shri Nilesh Karalkar, Sai Samarth Welfare Society, K-10, Kurar Village, Malad (E.), Mumbai-400 097, (2) 11th Labour Court, Mumbai.—*Respondent.*

In the matter of Revision Applications U/s. 44 of the M.R.T.U. & P.U.L.P Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri D. D. Naik, Ld. Advocate for the Applicant Company,

Shri S. S. Choubal, Ld. Advocate for the Respondent workmen.

Common Oral Judgement

(Dated 2nd July 2002)

Revision Application (ULP) Nos. 50/2002 and 51/2002 are preferred by the Original Respondents feeling aggrieved of the Order below Exh. U-2 dated 25th February 2002 passed by the 11th Labour Court, Mumbai in Complaint (ULP) Nos. 401 and 402 of 2001 whereby the said Court allowed the application U-2 and thereby directed the Respondents *i. e.* Applicant herein to allow the Complainants to report for work temporority by way of interim relief and pay them their regular wages, provided the Complainants submit in writing the undertaking each of 'good behaviour' on work with the Respondents, till the final disposal of the main Complaints at Exh.U-1 each finally on merits. The said order was ordered to be complied within a month from 25th February 2002.

2. Both the Revision Applications are disposed of by way of common judgment as the facts involved in both the applications at Exh. U-2 in the aforesaid Complaints are similar and common and the same may be narrated as follows :—

It is seen that Original Complainants Shri Rajendra Vir Singh and Shri Nilesh Karalkar were working as Workers since last 7 years with the Applicants herein. It indicates that the delinquent employees were suspended on 9th August 1999. They were issued charge-sheets on 9th October 1999 on the following charges :—

(A) Riotous, disorderly or indecent behaviour on the premises of the establishment; (B) Commission of any act subversive of discipline or good behaviour on the premises of the establishment; (C) Wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior. In the departmental enquiry, both the delinquent employees participated and the enquiry as per the record was conducted thoroughly by taking about 75-80 sittings. The Enquiry Officer gave them translation of the charge-sheet in Marathi and also copies of the documents on which the employer relied. In the departmental enquiry, the Enquiry Officer held that the charge levelled against the delinquent employees were proved and ordered for dismissal *w. e. f.* 3rd April 2002.

3. Feeling aggrieved of the dismissal order, both the Complainants rushed to the Labour Court and filed the complaints referred to above, under items 1(*a*), (*b*), (*d*), (*f*) & (*g*) of Sch. IV of the M.R.T.U. & P.U.L.P Act, 1971 and prayed for the reliefs, as mentioned in para No. 9(*a*) to (*h*) of the Main Complaints. In both the Complaints, applications at Exh. U-2 *i. e.* for interim relief were taken out and it was prayed that pending the hearing and final disposal of the Main Complaints, the Respondents be directed to withdraw the dismissal order and allow the Complainants to resume their duties and pay them their last drawn salary every month. It was further prayed that pending the hearing and final disposal of the Main Complaints, it be declared that the enquiry conducted against the Complainants is not legal, fair and proper and the findings of the enquiry officer are perverse. The main contention in the Complaints and the Interim applications is that the Complainants were not given fair and proper opportunity and were not supplied the copies of the documents and therefore the enquiry was not conducted in fair manner and the principles of natural justice were not followed.

4. The Respondents resisted the Interim applications by filing reply Exh. C-4 and contended as follows :—

It is submitted that the Complainants were issued the charge-sheets in respect of the misconducts committed by them at the work-place. It is asserted that the principles of natural justice were followed by giving all the documents and papers relied in the enquiry. It is submitted that both the Complainants participated in the enquiry and they were represented by the Secretary of Bhartiya Kamgar Sena and latter on by the office-bearer of Maharashtra Rajya Rashtriya Kamgar Sangh-Mr. Shashi Hadkar. It is stated that the Enquiry Officer after considering the oral and documentary evidence of the Management came to the proper conclusion and held that the charges levelled against the delinquent employees were proved and therefore issued the order of dismissal *w. e. f.* 3rd April 2001. It is denied that unfair labour practice was committed and the punishment of dismissal is shockingly disproportionate.

5. I have called for the record and proceedings and gone through the same. Heard Mr. D. D. Naik, Ld. Advocate for the Applicant and Mr. S. S. Choubal, Ld. Advocate for the Respondents. The following points arise for my determination with my findings thereon, as below :—

Points.—

(1) Whether Revision Application (ULP) No. 50/2002 and 51/2002 are to be allowed by setting aside the Order below Exh. U-2 dated 25th February 2002 passed by the 11th Labour Court, Mumbai ?

(2) What order and relief ?

Findings.—

Point No. 1 : No.

Point No. 2 : Please see order below.

Reasons

6. *Point No. 1 :*—In the beginning it is necessary to place on record that Complaint (ULP) No. 401/2002 was filed by Shri Rajendra Vir Singh and Complaint (ULP) No. 402/2001 was filed by Shri Nilesh Karalkar and in the said Complaints both the workers have challenged their dismissal order dated 3rd April 2001. In the said Complaints, as per the record, Exh. U-2 for Interim Relief was taken out and the Labour Court has disposed of both the applications by the impugned order dated 25th February 2002. The Applicants herein have challenged the said order and thereby claimed exception. Both the Revisions are arising out of the same order. Hence for the convenience they are disposed of by common order.

7. Now the main contention and grievance of Mr. D. D. Naik, Ld. Advocate for the Applicant is that the charge-sheet dated 9th October 1999 was issued to the delinquent employees in respect of the misconducts committed by them, as detailed above and in the departmental enquiry full opportunity was given to defend their case. As per the submission of Mr. D. D. Naik, initially the Secretary of Bhartiya Kamgar Sena-Mr. Rajendra Rane defended the Complainants and later on another Union came into picture *viz.* Maharashtra Rajya Rashtriya Kamgar Sangh and Mr. Shashi Hadkar, Office-bearer of the said Union defended the delinquent employees in the enquiry. Mr. Naik stressed that in the departmental enquiry, fair and proper opportunity was given and all the documents were supplied to the delinquent employees. Hence, there was no question of not giving fair opportunity, as alleged by the Complainants. The another contention of Mr. D. D. Naik, Ld. Advocate for the Applicant is that the Ld. Labour Court in the impugned judgment held that at this juncture no unfair labour practice was indulged and therefore wrongly and illegally allowed the Interim Relief application Exh. U-2. Mr. Naik also stressed that while deciding the Interim Relief application, the Labour Court should not have granted the final relief, which can be considered and granted while deciding the Main Complaint.

8. In support of his submission, Mr. D. D. Naik relied on various rulings and the same may be referred as under :—

(1) 1988 (57) FLR Page No. 27.

Diwakar Singh Sikarwar *V/s.* New India Assurance Co. Ltd. & ors.

(2) 1997 (1) LLN Page No. 503 (Raj. H. C.)
Veer Pal Singh *V/s.* Union of India & ors.

(3) 1997 (2) LLN Page No. 1066 (All. H. C.)
Triveni Structural Ltd. Allahabad *V/s.* State of Uttar Pradesh & ors.

(4) 1997 (2) LLN Page No. 1068 (All. H. C.)
Uttar Prasesh State Textile Corporation Spinning Mills, Jhansi *V/s.* State of U. P. & ors.

(5) V. Venugopal & anr. *V/s.* Management of Reed Relays & Electronics Ltd. Madras & anr. 1998 (2) LLN Page No. 577 (Madras H. C.)

(6) 2000 II CLR Page No. 452 (Bom. H. C.) Hawaldar Singh *V/s.* Talgrania Metal & Steel Industries & ors.

On going through these rulings, it indicates that there was a misconduct by the respective employees *viz.* using abusive and unparliamentary language against the superiors and refusal to obey their orders. The substance indicates that the misconduct of such a nature cannot be said to be a petty one and the suspension order cannot therefore be challenged on the ground

that it is based on petty charges. Relying on the aforesaid cases, Mr. D. D. Naik urged that in the case in hand, the charges levelled against both the employees were serious *i. e.* of using abusive language and attempting to assault and hence such a charges cannot be said to be petty and the same were of serious nature. These circumstances and the report of the Enquiry Officer on this point has been lost sight of by the Labour Court.

9. On the point of granting final relief at the interim stage by the Labour Court, it has been canvassed by Mr. D. D. Naik that the same is a patent illegality and such reliefs cannot be granted while deciding the interim application. To substantiate his submission, Mr. D. D. Naik further invited my attention to the following cases :—

(1) 2000 II CLR Page No. 921 (All. H. C.)

National Airport Authority & Ors. *V/s.* Kamakhya Narain Singh.

(2) 1997 I CLR Page No. 949 (Guj. H. C.)
Ahmedabad Municipal Transport Service *V/s.* Hisamudin Dosumiya Shaikh.

(3) 1999 I CLR Page No. 1257 (Bom. H. C.)
Ichalkaranji Municipal Council *V/s.* Raju Bandu Taral & ors.

On going through the said rulings, the substance indicates that the interim relief cannot be granted by deciding the main issue at the interlocutory stage when main issue is required to be decided finally in pending proceedings. Thus Mr. D. D. Naik canvassed that the impugned order passed by the Labour Court is erroneous, Particularly when the Main Complaint is pending, at interim stage Exh. U-2 should not have been granted and hence he urged for allowing both the Revision Applications by setting aside the impugned order.

10. It is necessary to place on record that the Enquiry Officer has after conducting the departmental enquiry ordered for dismissal of both the employees *w. e. f.* 3rd April 2001 and feeling aggrieved of the said dismissal order, the Complainants have, as detailed above, filed both the Complaint under the items mentioned above and taken out application Exh. U-2 for interim relief. On going through the Main Complaint and the prayer clauses therein, the Complainants have in the Main Complaints prayed for the relief *viz.* to hold and declare that the Respondents have engaged in unfair labour practice and to direct them to cease and desist therefrom, to reinstate them with full backwages and continuity of service *w. e. f.* 3rd April 2001 and to withdraw the dismissal letter and allow the Complainants to resume their duties, etc. Thus comparing the reliefs granted by the Labour Court at the interim stage, I don't find that the said reliefs are final in nature. It is because in the Main Complaints, as mentioned earlier, there is a prayer clause for full backwages and continuity of service *w. e. f.* 3rd April 2001, while in the impugned order, as detailed above, the Court has granted the interim relief and thereby allowed the Complainants to report for work temporarily by way of interim relief and directed the Respondents to pay them regular wages provided they submit in writing the undertaking of 'good behaviour' on work with the Respondents till final disposal of the Main Complaints at Exh. U-1 each finally on merits. Meaning thereby, the final relief is not granted by the Labour Court, but only the interim relief and that too conditional *i. e.* till the disposal of the Complaint, was granted. Hence, the submission of Mr. D. D. Naik that the Court has granted the final relief cannot be considered in view of the difference in the reliefs claimed in the Main Complaint and that granted at the interim stage. Hence the citations, referred earlier on the point of not granting final relief at the interim stage cannot be said to be applicable while deciding the Revision Applications. It is also to be noted that the Labour Court has taken care of directing the respective Complainants to give the undertaking of 'good behaviour' on work.

11. I am aware that much was canvassed by Mr. D. D. Naik that in the present case considering the proved charges, the Labour Court should not have allowed the Complainants to report for duties and particularly the gravity of misconduct ought to have been considered. Though the said submission of Mr. Naik is proper, the said point can be dealt with and decided by the Labour Court by way of oral and documentary evidence which may be adduced by both the parties. On carefully going through the record and proceedings, particularly the report of the Enquiry Officer, it indicates that in the past there was no any enquiry conducted against both the delinquent employees and there is nothing to show that the punishments were imposed on them. The Labour Court has while passing the order considered this aspect of past record and held that at this juncture the punishment of dismissal is shockingly disproportionate. In view of this position, I don't find that the interim relief which is conditional one, granted by the Labour Court, appears to be erroneous and illegal. Similarly whether the misconduct on the part of the workers is minor or of technical character, as laid down under item 1(g) of Sch. IV of the M.R.T.U. & P.U.L.P. Act, can be considered based on the evidence that may be adduced by both the sides at the time of hearing the Main Complaints. The Labour Court has *prima facie* held that when there is no allegation in respect of past conduct, the Complainants have *prima faciely* proved the case for grant of interim relief and hence passed a conditional order.

12. On the contrary, Mr. Sandeep Choubal, Ld. Advocate for the Respondents supported the judgment of the Labour Court and canvassed that in exceptional cases, the final relief can be granted by the Labour Court. According to his submission, in the present case, if the reliefs prayed in the Main Complaint, in the Interim Relief application and the order passed by the Labour Court is seen, the relief granted by the Labour Court cannot be said to be of final in nature. The submission of Mr. Choubal appears to be proper for a reason that both the reliefs, as detailed above, are not similar. In support of his submission, Mr. Choubal relied on the cases which were already cited before the Labour Court and I don't find that it is necessary to reproduce the same. Substance of the cases relied by him indicates that if a strong *prima facie* case is proved, in that case, the Labour Court can exercise the discretion and grant the final relief. As detailed above, in the impugned order there is no final relief because the Labour Court has not ordered for reinstatement, backwages, etc.

13. While deciding the Interim Relief Application, Court has to see whether a *prima facie* case exists for grant of the reliefs, so also the balance of convenience and irreperable loss. In the present case, the Labour Court has considered the said settled principles for grant of the interim relief and I don't find that there is any apparent error to call for the interference of the Industrial Court to disturb the reasoning and the impugned order passed by the Labour Court. The Complainants are out of employment and therefore the Court has found out a workable solution and the condition of good behaviour has been imposed, till the final disposal of the Complaint on merits. On carefully scrutinising the record and proceedings and viewed from all the angles, I don't find that an exception is made out by the Applicants to call for the interference of the Industrial Court by exercising the revisional jurisdiction U/s. 44 of the M.R.T.U. & P.U.L.P. Act. hence, I answer the Point No. 1 in the *Negative.*

14. Considering the facts and the legal points involved in the matter, the same is to be made time-bound and to be disposed off within the time-limit.

15. *Point No. 2.*—In view of the foregoing reasons and finding on Point No.1, I proceed to pass the following Order :—

Order

Revision Application (ULP) No. 50/2002 & 51/2002 are dismissed.

Labour Court is directed to put its endeavour to dispose of both the Complaint (ULP) No. 401/2001 & 402/2001 by the end of September 2002. Parties and Advocates are directed to co-operate the concerned Labour Court by not taking unwarranted adjournments.

No order as to cost.

U. R. PATIL,
President,
Industrial Court, Maharashtra Mumbai.

Mumbai,
Dated 2nd July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated 5th July 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

APPLICATION (ICTU) No. 7 of 2000.—Smt. Balbir Ward, President, Cine Costume & Makeup Artiste's Association, C/o Prasanna, Flat No. 13, 11th Road, Chembur, Mumbai 400 071 and 10 others.—*Applicants. Versus*—Cine Costume & Makeup Artiste's Association, 8, Dadar Neelkanath Apartments, Gokuldas Pasta Road, Dadar, Mumbai 400 014 and 15 others—*Opponents.*

CORAM.— Shri P. B. Sawant, Member.

Appearances.— Shri G. D. Talreja, Advocate for Applicants,

Shri Dilip Mandavia, Advocate for Opponents.

Order Below Exhibit U-14

(Dictated in open Court)

1. This is an application filed by the Applicant seeking withdrawal of the main application and praying for the appropriate orders of disposal of the main application. It is the contention of the Applicant that they have filed original application after obtaining a Consent Certificate under Section 28(1-A) of the Trade Unions Act. They had prayed for giving possession and control of the office property and record of the Opponent No. 1 Association to the duly elected executive body so as to manage the affairs of the Opponent No. 1 Association. This Court by an order dated 15th November 2000 constituted a Committee of the members under the Chairmanship of Shri V. P. Patil to hold elections and hand over the charge of all the accounts books etc. to the newly elected Committee. Accordingly, the elections were held on 11th February 2001 and the new Executive Body was elected and constituted in accordance with the Constitution and Rules of the Association. All the necessary charge of the office and books of accounts etc. has been handed over to the elected body on 12th February 2001 and the Executive Body is now functioning normally since 12th February 2001. The General Body meeting was also held as per the directions of the Court on 28th May 2001 and the report of the same has been filed separately before this Court.

2. It is contended that the main grievance raised in the application dated 2nd November 2000 now does not survive and the Association has reserved his right to take appropriate action against the other Opponents before the Competent Forum or the financial irregularities and the illegalities committed by the Opponents has decided in the General Body Meeting of the Association. All these submissions, the Applicants have now placed a period of withdrawal of the main application and are seeking appropriate orders about the disposal of the main application.

3. Thereafter *vide* Exh. U-23, similar application has been filed by the Applicant Nos. 4, 5, 7 to 11. The application Exh. U-14 was signed by the Applicant Nos. 1, 2 and 3. Therefore, the Applicant No. 6 has not signed the application Exh. U-23. She is Laxmi Patel who is shown as Applicant No. 2 in the main application. She has filed application Exh. UA-23 praying therein that to transpose her name from Applicant No. 2 to Opponent No. 17 in the present proceeding. She has filed Vakalatnama of Advocate. Therefore, her application is also taken for consideration before this Court.

4. By the say Exh. UA-20, the withdrawal has been challenged by the Opponent contending *interalia* that the application is false, frivolous and, therefore, no permission for withdrawal shall be granted. It is contended that the Court has to see whether the application is preferred

maliciously and further averment that such application of withdrawal is suffering with malice and, therefore, the Opponents have resisted the said withdrawal. It is pointed out that the Opponents have filed several interim orders and none of the orders are complied with. Therefore, the Opponents have preferred Contempt Petition and notices are issued. Therefore, this Court cannot allow the Applicant to run away from the clutches of law. It is pointed out that the Committee is functioning illegally, without any majority or support of the Committee Members. Whatever acts done by the Committee are illegal and contrary to the provisions of law. It is pointed out that the Applicants have made wild allegations against the Opponent about the misappropriation of funds. The present Committee is not functioning democratically. The majority of the Committee Members are opposing the present office bearers. The allegation of misappropriation and the main subject matter is yet to be decided and, therefore, it will not be appropriate on the part of the Applicants for withdrawal of the application that too after commiting illegality. In case it is allowed to withdrawa the application. irreparable loss will be caused to the Opponents and the Contempt Petition will be frustrated. The order of change of observer has not been displayed at the venue of Annual General Meeting nor was pronounced by the President during A. G. M. The true facts were estopped by the Applicants. It is pointed out that the Applicants are mismanaging the funds and have collected huge amount contrary to the provisions of the Constitution. It is prayed that the Applicants be directed to deposit the above said amount in the Court so that it cannot be mismanaged. Therefore, it is prayed that Administrator be appointed to adminster the office of the Association and fresh election be ordered. The Applicants be directed to deposit an amount of Rs. 1.80 crores in the office of this Court and prayed that the application for withdrawal be dismissed.

5. The say has been supported by the Opponents by affidavits of the office bearers and Committee Members who have resigned from their respective posts from the Opponent No. 1 union.

6. Having heard both the parties and having gone through the submissions advanced before the Court, following point arises for my determination :—

(1) Whether the Applicants can be allowed to withdraw the main application ?	Affirmative.
(2) What Order ?	As per final order.

Reasons

7. These original Applicants have filed application with a prayer that the term of the Opponent No. 2 onwards has expired in the year 1998 in accordance with the Constitution and Rules of the Opponent No. 1. Association together with the allegations that the Opponent Nos. 2 to 16 have committed misappropriation of funds, financial irregularities while holding their offices. For these reasons and other prayers, the Applicants have obtained a consent certificate from the Deputy Registrar of Trade Unions, Mumbai and have filed the present application. The consent certificate dated 29th September 2000 discloses that the Deputy Registrar was pleased to note the dispute pertaining to any misappropriation committed by the office bearers and, therefore, to raise a dispute under Section 28(1-A) of the Trade Unions Act, the certificate was issued to enable the Applicants to refer the said dispute to the Industrial Court. It is, therefore, clear that by virtue of the conclusions of the Deputy Registrar, Trade Unions, there was a dispute on his *prima facie* approach to the matter regarding office bearers of the Cine Costume & Makeup Artiste's Association have committed any misappropriation in the year 1997. Besides whether they can continue to be office bearers after the expiry of their term in

the year 1998 and so on. With all these consent certificate, the application has been filed before the Court and during the pedency of the application this court was pleased to direct to hold fresh elections and accordingly, elections were held. The history has to be reiterated because without looking into that aspect, the application for withdrawal cannot be entertained.

8. While looking into the allegations in the main application, those are mainly concentrating on the aspects of committing misappropriation of the funds by Shri. Sharad Shelar etc. For the purpose of grant of consent certificate obviously, the allegations as being raised will have to be considered to find out as to whether there is any substance in those allegations or that whether there is any oblique reasons for filing the application. However, before going deep to the matter, the Applicants seem to have withdrawn the application. Learned Advocate Shri. Mandavia has, therefore, submitted that the withdrawal of the application has to be construed that the Applicants have withdrawn all the allegations against Shri. Sharad Shelar and others that they have misappropriated the funds of the Association. At the outset, it has to be made clear that the effect of withdrawal simplicitor shall be that whatever prayers made are foregone and are withdrawn without getting those prayers being agitated. In other words, if the prayers are made for scrutiny or of search of the cause for filing the application it will become non-east when the main application has been withdrawn. It has to be made clear that since the Applicants have withdrawn the application and are seeking formal orders of this Court, then it reflects that in this Court at least the Applicants, have withdrawn, all the allegations against Shri. Shelar and, therefore, the allegations of misappropriation of funds, mis-utilisation of the office of the Association, collecting the funds and showing incorrect accounts etc. are to be treated as withdrawn. These observations are made by this Court because the consent certificate contains about those allegations and, therefore, this Court was required to look into the allegations to come to the conclusion as to whether the earlier body which was in power till 1998 or till the elections were held, whether has committed any misappropriation or misutilisation of funds etc. Obviously, by virtue of withdrawal, those instances will not be looked into nor will be enquired into.

9. It is also to be noted that the Applicants have withdrawn the application unconditionally. The Applicants have not reserved their rights to file fresh application on the same cause of action or for the same cause. In other words, the application is not intended to be withdrawn only on technical aspect but its withdrawal simpliciter amounting to withdrawal of all the prayers, against the previous body headed by Shri. Indulkar and, therefore, they are to be exgenerated. This is the real outcome of the matter.

10. Once the above conclusions are seen as a resultant outcome, if at all the permission will be granted by this Court for withdrawal, then the question of objecting for such withdrawal will have to be construed within the meaning of Order 23 Rule 1 together with the relevant provisions if any so far as Trade Unions Act is concerned. In the entire text of the Trade Unions Act, there is no provisions traced out so far, as withdrawal of the application is concerned. Therefore, in the absence of provisions in the special enactment, the provisions under general law will have to be made applicable. Rule 1 under Order 23, therefore, will have to be pointed out as below :—

> "At any time after the institution of the suit, the Plaintiff may as against all or any of the Defendant abandoned his suit or abandone a part of his claim. Provided that where a Plaintiff is a minor or other person to whom the provisions contained in Rule 1 to 14 of Order XXXXII extend neither suit nor any part of the claim shall be abandoned without leave of the Court".

The provise clause to Rule 1 of Order 23 speaks about the permission of the Court when the Plaintiff is minor or otherwise. There is no such case so far as the present application is concerned. Rule 2 under Order 23 lays down that :—

"The manner of filing the application seeking permission for withdrawal of the Suit ?

Rule 3 lays down that :—

"The mandate on the Court to get itself satisfied that if ;

(*a*) a suit must fail by reason of some formal defect or;

(*b*) That there are sufficient grounds for allowing the Plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim, it may on such term as it thinks fit grant the Plaintiff permission to withdraw---------with liberty to institute a fresh suit in respect of the subject matter of such suit".

Rule 4 lays down that :—

"Consequence of such abandonment or part of the Suit claimed or withdrawal from Suit without the permission"

Rule 5 lays down that :—

"To clarify the authority of the Court in a case to permit one of several Plaintiff to abandon a Suit or part of a claim under Sub-rule (1)".

Having regard to these provisions admittedly, the Applicants are not withdrawing the application without exclusion of one of the Plaintiff. Admittedly, one of the Applicant Laxmi Patel has not signed the application. However, she has already backed out from the Applicants' list and has filed an application for transposing her as the Opponents. It is very clear that Laxmi Patel is now no more in the shoes of the Applicants/Plaintiffs.

11. Second consequence of the withdrawal is that even after the withdrawal by these Applicants, the resultant consequence will the as stated earlier, of treating their allegations against the Oppponents as non-est. Therefore, the question of granting permission by this Court for withdrawal will have to be seen through the observation of Hon'ble Apex Court in a case of *M/s. Hulas Rai Baij Nath* V/s. *Firm K. B. Bass and Co., AIR 1968 Supreme Court-111.* It is observed that :—

"The language of Order 23, Rule 1, sub-Rule (1), gives an unqualified right to a Plaintiff to withdraw from the suit and, if no permission to file a fresh suit is sought under sub-Rule (2) of that Rule, the Plaintiff becomes liable for such costs as the Court may award and becomes precluded from instituting any fresh suit in respect of that subject matter under sub-Rule (3) of that Rule".

There is no provision in the Code of Civil Procedure which requires the Court to refuse permission to withdraw the Suit in such circumstances and to compel the Plaintiff to proceed with it. Though the observations are on a different set of facts, the cardinal principles laid down by the Hon'ble Apex Court will have to be taken into consideration.

12. In another case of *Sarquia Transport Service* V/s. *State Transport Appellate Tribunal, AIR 1987 SUPREME COURT, 88.* Hon'ble Their Lordships of Hon'ble Apex Court have considered the issue regading the withdrawal of the Writ Petition filed in the Court without permission to institute a fresh Petition and held that no fresh Writ Petition on the same cause of action can be filed in the High Court. However, it is further ruled that the Petitioner has abandoned

the remedy under Article 226 in respect of cause of action relied on in the Writ Petition. It is observed that the principle underlined Rule (1) and (3) of Order 23 is found on different policy. It should be extended in the interest of administration of justice to the case of withdrawal of Writ Petition also not on the ground of *res judicata* but on the ground of public policy. This would also discourage the litigants from indulging in bench hunting tactics.

13. In a case of *Baidyanath Nandi S/o. Trailakhya Nath Nandi and others* Vs. *Shyama Sunder Nandi S/o. Hati Nandi. A. I. R. (30) 1943 Calcutta 427.* The question of granting permission to file fresh Suit after withdrawal of the earlier Suit has been considered by Hon'ble Their Lordships. It is ruled that :—

> "The operation of Sub-rule (4) is confined to cases where the permission of the Court is necessary in order to enable the Plaintiff to withdraw from the Suit or in other words, it is applicable only when the Plaintiff wants to have a liberty of instituting a fresh suit in respect of the same subject matter. In such case, express leave of the Court is necessary and even if there are circumstances present which would justify the Court is granting the leave under Sub-rule (2), Sub-rule (4) imposes restraints upon the authority and prevent it from granting permission to one of the several Plaintiff to withdraw from the Suit, if other Plaintiffs do not consent to this course."

> Having regard to this principle, the fact matrix of the case clearly visualises that the Applicants excluding Laxmi Patel have sought withdrawal because the cause for which, they have obtained consent certificate is over so far as fresh elections are concerned. The question pertaining to misappropriation of funds are concerned, those are admittedly being withdrawn so far as this Court is concerned., in pursuance of which, when the Applicants do not intend to reserve their right to file a fresh suit, the question of granting permission will not arise. Therefore, in my opinion, the Applicants, when were knowing it full well the consequences of the withdrawal, have filed a withdrawal application, which cannot be objected to.

14. Hon'ble Their Lordships in a case of *M/s. Hulas Rai Baij Nath* Vs. *First K. B. Bass and Co. (Supra)* have further highlighten the point that when, therefore, one of several Plaintiffs desire to withdraw from the Suit without reserving the liberty to institute a fresh suit in respect of the same matter, the consent of co-Plaintiff is not necessary and Sub-rule (4) of Rule 1 of Order 23 has no application to such case. Here in this case, it is, therefore, very clear that the text used by the legislature while drafting those Rules under Order 23 that it is only when the Plaintiff wants the liberty to bring fresh suit in respect of the same subject matter, he is required to ask the permission of the Court as is provided in Sub-rule (2).

15. Learned Advocate Shri Mandavia has brought my attention towards the other applications filed by these Opponents raising dispute against the activities of the newly elected body. He has pointed out that the irregularities are required to be enquired into and, therefore, the application cannot be allowed to be withdrawn. It is to be noted that the of Trade Unions Act, provisions under Section 28(1-A) reflect that there is a dispute with respects whether or not any person is an office bearer or member of the registered trade union including any dispute relating to wrongful expulsinon of any such office bearer or whether there is any dispute relating to the property including Account Books of any registered Trade Union, any member or such registered trade union for a period of not less than six months met with the Consent of Registrar, refer the dispute to the Industrial Court. It is therefore, very clear that during the process of pendency of the application, the elections were held. The Opponents are raising a dispute regarding financial activities of these newly elected body. Besides they are also raising a dispute pertaining to the legality or Applicants' coming into power under the

guise of so called election. These are the disputes scquarely falling within the ambit of Section 28 (1-A) as narrated above. Therefore, the Opponents being the members of the Association have every right to approach the Registrar of Trade union for obtaining the consent certificate and agitate the matter before the Court. By virtue of this position, though the point raised by these Opponents that the dispute which was referred to this Court under the consent certificate issued by the Deputy Registrar, Trade Unions can only be considered by this Court and not any other issue. Therefore, the question for making enquiry so far as the issue or dispute raised by the Opponents will not come into way or the Applicants' withdrawing the application.

16. Learned Advocate Shri. Mandavia has pointed out my attention towards the observation of Hon'ble Apex Court in a case of *Civil Appeal No. 5102 of 2000 reported in Jt. 2000 (10-SC)-599.* Hon'ble Apex Court has obseved that it is the acknowledged position of law that no party can be forced to suffer for any action of the Court or its omission to act according to the procedure established by law. Under the normal circumstances, the agrieved party can prefer an appeal only against the order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Court in terms of the Order 43, Rule (1) of the Code of Civil Procedure. It appears that the observations of Hon'ble Apex Court are put up before this Court to point out that the application of the Opponent needs to be construed by this Court only. As stated earlier, the grievances of defaulcation of funds or irregularity by the newly elected body is being raised, then a party can agitate on the basis of the consent certificate. Therefore, the consent certificate which was already obtained by the Applicant but now the Applicants the mselves are withdrawing the main application, then those allegations against the Opponents will not stand. Besides the allegations of the Opponents against the Applicants can safely be dealt with if the Opponents shall come before the Court with the consent certificate. In the result, I have found no reason to deny the withdrawal of the main application. Hence, I answer the above point accordingly and pass the following order :—

Order

The application Exh. U-14 is hereby allowed.

No order as to cost.

P. B. SAWANT,

Member,

Industrial Court, Mumbai.

Mumbai,

Dated 26th April, 2002.

(Sd./-)

Registrar,

Industrial Court, Mumbai.

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